



# Federal Register

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**Wednesday**

**Oct. 18, 2000**



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### WASHINGTON, DC

**WHEN:** November 14, 2000, at 9:00 a.m.

**WHERE:** Office of the Federal Register  
Conference Room  
800 North Capitol Street, NW.  
Washington, DC  
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202-523-4538



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# Rules and Regulations

Federal Register

Vol. 65, No. 202

Wednesday, October 18, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000–SW–24–AD; Amendment 39–11930; AD 2000–20–18]

RIN 2120–AA64

#### Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This AD requires inspecting the brackets that attach each horizontal stabilizer slat (slat) to the stabilizer for a crack and replacing the slat assembly if a crack is found. Installing airworthy segmented slat assemblies would be required prior to flight after December 31, 2000 and would constitute terminating action for the requirements of this AD. This amendment is prompted by an incident in which a slat separated from a helicopter. The actions specified by this AD are intended to prevent a slat from separating, impact with a main or tail rotor blade, and subsequent loss of control of the helicopter.

**DATES:** Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at

the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

#### SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) that applies to BHTC Model 407 helicopters was published in the *Federal Register* on July 20, 2000 (65 FR 44994). That action proposed to require visually inspecting certain brackets that attach slats to the horizontal stabilizer for a crack and replacing any slat assembly that has a cracked bracket. Also proposed was installing different part-numbered airworthy segmented slat assemblies on all affected models prior to flight after December 31, 2000.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 348 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to perform the visual inspections, 1 work hour to replace a slat assembly, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$2,364 per segmented slat assembly. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,697,544, assuming 1 inspection per helicopter and replacement of the 2 slat assemblies on each helicopter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

#### 2000–20–18 Bell Helicopter Textron

**Canada:** Amendment 39–11930. Docket No. 2000–SW–24–AD.

**Applicability:** Model 407 helicopters, serial numbers 53000 through 53347, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not



been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent a horizontal stabilizer slat (slat) from separating, impact with a main or tail rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, visually inspect the brackets, part number (P/N) 206-023-119-109 or -110 or P/N 407-023-801-127 or -128, that attach the slats, P/N 407-023-002-117, to the horizontal stabilizer for a crack.

(1) If any crack is found, replace the slat assembly, P/N 407-023-002-117, with an airworthy segmented slat assembly, P/N 407-023-001-101, before further flight. Replace the slat assembly in accordance with Part II of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. ASB 407-99-32, dated December 7, 1999.

(2) If no crack is found, replace each slat assembly, P/N 407-023-002-117, with an airworthy segmented slat assembly, P/N 407-023-001-101, prior to flight after December 31, 2000.

(b) Installing airworthy segmented slat assemblies, P/N 407-023-001-101, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Part II of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. ASB 407-99-32, dated December 7, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 2000.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD CF-2000-09, dated March 21, 2000.

Issued in Fort Worth, Texas, on September 29, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00-26236 Filed 10-17-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. 99-NM-248-AD; Amendment 39-11932; AD 2000-20-20]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 747-400 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, that requires removal of existing inertial reference units (IRU) and installation of modified IRU's. This amendment is prompted by a report of the failure of the left and center IRU's on a single flight. The actions specified by this AD are intended to prevent loss of multiple IRU's in flight, which could result in the loss of navigation data during flight. This could compromise the ability of the flight crew to maintain the safe flight and landing of the airplane.

**DATES:** Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jay G. Yi, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1013; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 series airplanes was published in the **Federal Register** on October 6, 1999 (64 FR 54229). That action proposed to require removal of existing inertial reference units (IRU) and installation of modified IRU's.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### Support for the Proposal

One commenter supports the proposed rule.

#### Request To Extend Compliance Time

Three commenters request that the FAA extend the proposed compliance time for the installation of modified IRU's.

The first commenter states that sending all its units back to the parts manufacturer for modification will take at least two weeks per unit. Additionally, taking the unmodified units off all of its airplanes and shipping them will delay completion of the installation required by the proposed AD until receipt of the modified units. Therefore, the proposed installation would not be accomplished until February 2002. The commenter adds that the dual inertial reference system (IRS) failure that prompted this proposal, as stated in the preamble, was caused by a short circuit in the brake system control unit (BSCU). The airplane manufacturer later determined that the short circuit was due to moisture ingested into the BSCU, and released Boeing Service Bulletins 747-25-3080, Revision 2, dated February 29, 1996 (improves the integrity of the drip shields), and 747-53-2402, dated December 21, 1995 (installs protective panels over the drip shields to protect them from damage) to address this condition. The commenter has completed these modifications, and notes that these modifications significantly reduce the likelihood of water damage to the BSCU. The commenter states that, considering these airplane modifications and the realities of the modification stated above, a two-year compliance time would be more realistic.

The second commenter states that 12 months is an unrealistic and unnecessary compliance time, and submits the following factors for consideration:

- First, the IRU part numbers addressed by the proposal are used on Boeing Model 737–300/400/500, 757, and 767 series airplanes, in addition to Model 747–400 series airplanes. Many of the 747–400 operators also operate some of the other airplane types and have common spares. The operators will either have to maintain separate spares for the Model 747–400 series airplanes, or modify all of the spares. If the operators are forced into maintaining separate spares, this will increase the quantity of spare units required.

- Second, while there is a potential for this condition to develop, the probability of occurrence is lower than implied in the proposal. The availability of standby heading and attitude systems, plus the ability of the IRU to recover heading and attitude capability, also reduce the urgency to complete all updates within 12 months. Considering the above factors, the commenter recommends the compliance time be extended from 12 months to at least 24 months, with the expectation that an extension will likely be needed for full compliance.

The third commenter requests that the compliance time be changed from 12 months to 24 months, but does not give a reason for this request.

The FAA concurs with the commenters' requests to extend the compliance time for installation of modified IRU's; however, the FAA does not concur with the length of time requested by the commenters. Following careful consideration of the comments, the FAA considers that an extension of the compliance time specified in paragraph (a) of this AD from 12 months to 18 months will not compromise safety. Paragraph (a) of this final rule has been revised accordingly.

#### Request To Revise Applicability

Three commenters request that the applicability of the proposed rule be revised.

The first commenter requests that the proposed applicability be revised to apply to all Model 747–400 series airplanes, not just specific line numbers as written in the applicability section. The commenter states that some of its recent deliveries of Model 747–400 series airplanes had the upgraded IRU's installed at delivery, and those line numbers are not included in the current applicability of the proposed rule. The commenter also notes that it is possible that one or more of the upgraded IRU units were replaced with an older IRU after the airplane went into service; therefore, it is the commenter's intent to accomplish the proposed requirements

on all of its Model 747–400 series airplanes.

The second commenter requests that the statement "certain Boeing Model 747–400 series airplanes," in the preamble of the proposed rule be revised to read, "all Boeing Model 747–400 series airplanes equipped with Honeywell inertial reference systems." The commenter notes that explicitly stating this up front in the proposed AD provides clarification of the airplanes affected by the proposal. The commenter also recommends identifying a second grouping in the applicability section to make the spares requirement [paragraph (b)] applicable to all Model 747–400 series airplanes.

The third commenter states that some Model 747–400 series airplanes not specified in the proposal may have had replacement IRU's installed that should be modified.

The FAA does not concur with the commenters' request. In response to the first and second commenters, all new 747–400 series airplanes after line number 1187 were delivered with newly designed IRU's installed, and the FAA previously disseminated instructions to operators about replacement or exchange of the new IRU's with older-type IRU's. In response to the third commenter, the FAA has addressed the intent of the commenter's request in paragraph (b) of this AD.

#### Request To Revise Spares Paragraph

One commenter suggests that since the problem referenced in the proposed rule is unique to Model 747–400 series airplanes, and other IRS-equipped fleets can continue using older part numbers, the text in the spares paragraph should be revised from "any airplane" to "any 747 airplane."

Two commenters recommend the wording in the spares paragraph be revised to read, "As of the required compliance date for this AD, no person shall install an IRU with a Boeing part number which precedes S242T101–113 on a Boeing 747–400 series airplane," or "Subsequent to the required compliance date of this AD, no person shall install a Honeywell IRU having a Boeing part number that precedes S242T101–113 on a Boeing Model 747–400 series airplane." The commenter states that this is to require the use of modified IRU's after the compliance date, thereby permitting the use of existing inventory during the interim period and to preclude the use of any IRU preceding part number S242T101–113 after the compliance date.

The FAA does not concur with the commenters' requests to change the words in the spares paragraph from "on

any airplane" to "on any Boeing Model 747–400 airplane," or "with a Boeing part number that precedes S242T202–113 on a Boeing Model 747–400 series airplane." The applicability statement of all AD actions lists all models affected by that AD. All of the requirements stated in an AD are applicable only to the airplane models listed in the applicability, and based on information received from the parts manufacturer, only the IRU's having the part numbers listed in the spares paragraph are affected by the AD.

Additionally, the FAA does not concur with changing "As of the effective date \* \* \*" to "As of the compliance date \* \* \*". Removing an unsafe condition that already exists on an airplane necessarily involves performing maintenance on the airplane, and the FAA always provides some kind of "grace period" in order to minimize disruption of operations. On the other hand, prohibiting installation of spares that have been determined to create an unsafe condition does not require any additional maintenance activity; it simply requires use of one part rather than another. In general, once an unsafe condition has been determined to exist, it is the FAA's normal policy not to allow that condition to be introduced into the fleet. In developing the technical information on which every AD is based, one of the important considerations is the availability of parts that the AD will require to be installed. When it is determined that those (safe) parts are immediately available to operators, it is the FAA's policy to prohibit installation of the unsafe parts as of the effective date of the AD.

Therefore, the FAA finds that there is no justification for making the changes requested by the commenters. No change to the final rule is necessary in this regard.

#### Request To Revise Statement of Unsafe Condition

One commenter requests that the unsafe condition as stated in the proposed rule be revised from " \* \* \* compromise the ability of the flight crew to maintain the safe flight and landing of the airplane" to " \* \* \* compromise the ability of the flight crew to subsequently cope with adverse operating conditions." The commenter states that the loss of primary data to both pilots, in addition to loss of other navigational information is improbable. The commenter adds that while loss of primary data could impact operations during adverse conditions, with standby data available, loss of primary data does not impact safe flight of the airplane.

The FAA does not concur with the commenter's request. The FAA has determined that, should an airplane lose all three IRU's, which would result in operating with only one standby instrument, it would indeed impact safe flight of the airplane due to reduced controllability resulting from loss of the IRU's. No change to the final rule is necessary in this regard.

#### **Request To Revise Certain Sections in the Preamble**

One commenter describes revisions to various sections of the preamble of the proposed rule. In the "Summary" section, the commenter revises the wording to state that the proposed AD is applicable to 747-400 series airplanes equipped with the Honeywell IRS, and to present a logical sequence for the event and the consequences. The commenter also changes the statement of unsafe condition from " \* \* \* maintain the safe flight and landing of the airplane" to " \* \* \* subsequently cope with adverse operating conditions." In the "Discussion" and "Explanation of Relevant Service Information" sections, the commenter suggests revising the wording to ascribe the reported event specifically to a Model 747-400 series airplane equipped with the Honeywell IRS, to indicate the data loss, and to discuss attributed causes of the event. In the "Explanation of Requirements of Proposed Rule" section, the commenter revises the wording to clarify the intent of Boeing Alert Service Bulletin 747-34A2638, Revision 1, dated April 8, 1999, as applicable to multiple part numbers of Honeywell IRU's. In the "Differences Between Proposed Rule and Alert Service Bulletin" section, the commenter revises the wording to identify the time necessary to perform the required replacement as being consistent with the alert service bulletin estimate, and to identify compliance time based on initial estimates from Honeywell and operators' recommendations.

Another commenter states that actions specified in the proposal are intended to prevent loss of navigation during flight. The commenter discusses the various navigation systems and notes that it is rare that navigation data from the IRU's are used during the approach and landing phase of flight. The commenter further states that the event that prompted the NPRM included loss of primary heading and attitude data from the left and center IRU's, as well as loss of navigation data. The right IRU was still providing valid heading and attitude reference, and the standby systems were available. The commenter

adds that when the voltage was removed, the faulted IRU's could have been reset to the "ATTITUDE" mode, which returns the primary heading and attitude functions.

The same commenter states that the proposal states that this condition is likely to exist on other products of the same type design. However, the commenter notes that to its knowledge, this is the only occurrence of this condition throughout the entire service life of the Model 747-400 series airplane. In addition, the commenter states that service information has been issued to address the broken or damaged drip shields, which allowed liquid to enter the BSCU and cause the electrical fault. The commenter recommends the wording in the "Explanation of Requirements of Proposed Rule" be changed to "may develop" or similar wording which better describes the low probability of occurrence for this condition.

The FAA concurs with the commenter's description of the intent of these sections; however, because only the "Summary" section is restated in the final rule, no change to the other sections, as stated above, is necessary. Additionally, the "Summary" section of this final rule only represents a brief synopsis of the AD, it is accurate as proposed, therefore, no change to the final rule is necessary.

#### **Request To Revise Cost Impact Information**

Three commenters request that the cost information in the proposed rule be revised.

The first commenter states that the cost to U.S. operators estimated in the proposal is approximately \$3,000, and reasons that the true costs involved are significantly higher for the following reasons:

- First, the cost estimate in the proposal allowed for 1 hour per airplane; however, the actual time to remove, install, and functionally check all three IRU's will be longer.
- Second, the cost estimate did not include any of the operators' costs for internal processing, shipping, and handling.
- Third, the operators may have to purchase additional spare units to support rotation of IRU's through the modification program.
- Fourth, the estimate does not include the cost to modify or update the IRU's. In addition, the commenter notes that, although there is no cost specified in the proposal for the required parts, the parts manufacturer will charge for the modification of some parts. Therefore, the statement that the

manufacturer will provide parts at no cost is inaccurate and should not be included in the proposal.

The second commenter states that the estimated work hours in the cost information section should be revised from 1 work hour to 2.25 work hours to identify cost impacts consistent with the estimated time to perform the proposed replacement.

The third commenter makes no specific request for a change to the proposed rule, but states that, if the 12-month compliance time is retained, it could be faced with purchasing additional shipsets of IRS units (assuming they are available in time) in order to expedite accomplishment of the fleet campaign. The commenter notes that a shipset costs about \$450,000, and two additional shipsets might be needed.

The FAA agrees with the first commenter, in that the service bulletin does not specify that the required parts will be supplied by the parts manufacturer at no cost to the operators. The service bulletin merely states that the operator can supply the parts. Information received from the parts manufacturer states that it will supply the parts for the actions required by this AD; however, any other modifications will be paid for by the operators. No change to the final rule is necessary in this regard.

The FAA does not concur with revising the work hours necessary for accomplishment of the required replacement. The cost impact information describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 1 work hour in the cost impact information below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. No change to the final rule is necessary in this regard.

## Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

## Cost Impact

There are approximately 429 Model 747-400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is \$60 per work hour. Required parts will be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$3,000, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000-20-20 Boeing:** Amendment 39-11932. Docket 99-NM-248-AD.

**Applicability:** Model 747-400 series airplanes, having line numbers 696 through 1187 inclusive, certificated in any category; equipped with Honeywell inertial reference units (IRU).

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent loss of multiple IRU's in flight, which could result in the loss of navigation data, and compromise the ability of the flight crew to maintain the safe flight and landing of the airplane, accomplish the following:

## Replacement

(a) Within 18 months after the effective date of this AD, remove the left, center, and right IRU's, and install modified IRU's, in accordance with Boeing Alert Service Bulletin 747-34A2638, Revision 1, dated April 8, 1999.

**Note 2:** Removal of existing left, center, and right IRU's and replacement with modified IRU's in accordance with Boeing Alert Service Bulletin 747-34A2638, dated

January 29, 1999, is considered acceptable for compliance with paragraph (a) of this AD.

## Spares

(b) As of the effective date of this AD, no person shall install an IRU having Boeing part number S242T101-110, S242T101-111, or S242T101-112, on any airplane.

## Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Avionics Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

## Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

## Incorporation by Reference

(e) The replacement shall be done in accordance with Boeing Alert Service Bulletin 747-34A2638, Revision 1, dated April 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 2000.

Issued in Renton, Washington, on October 6, 2000.

**Donald L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00-26308 Filed 10-17-00; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99-SW-35-AD; Amendment 39-11929; AD 2000-20-17]

RIN 2120-AA64

**Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332C, L, and L1 helicopters. This AD requires inspecting the horizontal stabilizer spar tube (spar tube) for corrosion, hardness, cracks, and scratches, and if necessary, replacing any unairworthy spar tube and bushing with an airworthy spar tube and bushing. This amendment is prompted by the loss of a horizontal stabilizer in flight due to a spar tube failure. The actions specified by this AD are intended to prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

**DATES:** Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5490, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) which applied to the ECF Model AS332C, L, and L1 helicopters was published in the **Federal Register** on July 14, 2000 (65 FR 43720). That action

proposed to require inspecting any spar tube installed on certain horizontal stabilizers for corrosion, hardness, cracks, or scratches. Replacing the spar tube and bushing, as necessary, with an airworthy spar tube and bushing was also proposed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 3 helicopters of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per helicopter to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$1,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$10,200.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000-20-17 Eurocopter France:**

Amendment 39-11929. Docket No. 99-SW-35-AD.

**Applicability:** Model AS332C, L, and L1 helicopters with horizontal stabilizer spar tube (spar tube), part number (P/N) 330A13-2024-01, -02, -03, or -04, installed on horizontal stabilizer, P/N 332A13-1000-00, -01, -02, -03 or 332A13-1040-00, or -01, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters on which the spar tube composite bushing (bushing), P/N 330A13-2024-31, has been replaced and since replacement has accumulated:

(1) Less than 1400 hours time-in-service (TIS) or less than 30 calendar months:

(i) Prior to accumulating 1600 hours TIS or 32 calendar months, whichever occurs first, and thereafter at intervals not to exceed (NTE) 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube in accordance with (IAW) the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of Eurocopter France Service Bulletin No. 01.00.57, Revision 1, dated November 24, 1999 (SB).

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, and crack inspection of paragraph 2.B.2. of the SB, replace the bushing with a new bushing, before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2. of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) 1400 or more hours TIS or 30 or more calendar months:

(i) Within 200 hours TIS or 2 calendar months, whichever occurs first, and thereafter at intervals NTE 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, and crack inspection of paragraph 2.B.2 of the SB, replace the bushing with a new bushing before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2 of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(b) For all spar tubes:

(1) With less than 7500 hours TIS or 144 calendar months since original installation:

(i) Prior to accumulating 7500 hours TIS or 144 calendar months, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(1)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) With 7500 or more hours TIS or 144 or more calendar months since original installation:

(i) Within 500 hours TIS or 12 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(2)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of the SB.

(3) After accomplishing the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, thereafter, at intervals NTE 7500 hours TIS or 144 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA.

Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2., in Eurocopter France Service Bulletin No. 01.00.57, Revision 1, dated November 24, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 2000.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999-039-073(A)R1, dated December 29, 1999.

Issued in Fort Worth, Texas, on September 29, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00-26235 Filed 10-17-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-228-AD; Amendment 39-11756; AD 2000-11-08]

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes Powered by General Electric Model CF6-80C2 Series Engines; Correction**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographical error that appeared in airworthiness directive (AD) 2000-11-08, amendment 39-11756, that was published in the **Federal Register** on June 1, 2000 (65 FR 34935). The

typographical error resulted in a reference to an incorrect fuel specification. That AD is applicable to certain Boeing Model 747 and 767 series airplanes. That AD supersedes an earlier airworthiness directive to require revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for the new placard and AFM revision. That AD also includes identical requirements applicable to airplanes on which standard fuel nozzles are not installed.

**DATES:** Effective July 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2681; fax (425) 227-1181.

#### **SUPPLEMENTARY INFORMATION:**

Airworthiness Directive (AD) 2000-11-08, amendment 39-11756, applicable to certain Boeing Model 747 and 767 series airplanes, was published in the **Federal Register** on June 1, 2000 (65 FR 34935). That AD supersedes AD 98-08-23, amendment 39-10472 (63 FR 18817, April 16, 1998) to require revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for the new placard and AFM revision. That AD also includes identical requirements applicable to airplanes on which standard fuel nozzles are not installed.

As published, AD 2000-11-08 contains an erroneous fuel specification in paragraphs (a)(1)(i) and (c)(1) of that AD. Those paragraphs incorrectly reference MIL-T-83113, which is a specification that does not exist. The correct reference is MIL-T-83133.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Accordingly, in FR Doc. 00-13447 published June 1, 2000 (65 FR 34935), make the following corrections:

The effective date of this AD remains July 6, 2000.

#### **§ 39.13 [Corrected]**

1. On page 34937, in the second column, paragraph (a)(1)(i) of AD 2000-11-08 is corrected to read as follows:  
AD 2000-11-08

\* \* \* \* \*  
(a) \* \* \*

(1) \* \* \*

(i) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM-D-1655, Jet A, and Jet A-1 are authorized for unlimited use in this engine. Fuels conforming to MIL-T-5624 grade JP-5 and MIL-T-83133 grade JP-8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

\* \* \* \* \*

2. On page 34937, in the third column, paragraph (c)(1) of AD 2000-11-08 is corrected to read as follows:

\* \* \* \* \*

(c) \* \* \*

(1) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM-D-1655, Jet A, and Jet A-1 are authorized for unlimited use in this engine. Fuels conforming to MIL-T-5624 grade JP-5 and MIL-T-83133 grade JP-8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

\* \* \* \* \*

Issued in Renton, Washington, on October 5, 2000.

**Lirio Liu Nelson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00-26237 Filed 10-17-00; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 801

[Docket No. 98N-0970]

#### Medical Devices; Labeling for Menstrual Tampon for the "Ultra" Absorbency

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule that amends its menstrual tampon labeling regulation to add the term "ultra" absorbency for tampons that absorb 15 to 18 grams (g) of fluid with the syngyna test. At present, FDA requires standardized terms to be used

for the labeling of a menstrual tampon to indicate its particular absorbency. This rule enables consumers to compare the absorbency of one brand and style of tampon with the absorbency of other brands and styles. FDA is issuing this final rule under the Federal Food, Drug, and Cosmetic Act (the act) to ensure that labeling of menstrual tampons is not misleading. Elsewhere in this issue of the **Federal Register**, FDA is proposing to change the standardized menstrual tampon term "junior" to "light".

**DATES:** This rule is effective January 16, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA published a final rule which, among other things, amended its menstrual tampon labeling regulation to standardize the existing absorbency terms ("junior", "regular", "super", and "super plus") to correspond with the following four absorbency ranges: Less than 6 g; 6 to 9 g; 9 to 12 g; and 12 to 15 g of fluid, as measured by the syngyna test. The 1989 final rule did not include terms for tampons with absorbency in the 15 to 18 g range. Tampon manufacturers have asserted that many women need tampons with this higher level of absorbency to manage their heavy menstrual flow. See 54 FR 43766 to 43769.

Tampons are currently classified into class II (special controls) at 21 CFR 884.5460 and 884.5470. Any person who is required to register under section 510 of the act (21 U.S.C. 360) and part 807 (21 CFR part 807) and who intends to begin the introduction or delivery for introduction into interstate commerce of a tampon for commercial distribution is required to submit a premarket notification to FDA at least 90 days before making such introduction or delivery in accordance with section 510(k) of the act and subpart E of part 807. Under § 807.87(e), a 510(k) premarket notification for a menstrual tampon must contain, among other thing, the proposed labeling for the tampon. Section 801.430 (21 CFR 801.430) spells out the specific labeling required for tampons with 15 g or less of absorbency, including standardized terms for absorbency as determined by testing with the specified syngyna methodology. Because the regulation

currently provides no uniform labeling term for tampons that absorb 15 to 18 g of fluid with the syngyna test, the agency is requiring that such tampons be labeled as "ultra" absorbency. FDA has recently cleared a menstrual tampons product in this absorbency range, and they are available to women in the United States. FDA believes that designating a standard term for this absorbency range will improve consumer understanding of tampons across brands and allow for better adherence to advice in the tampon labeling about toxic shock syndrome (TSS).

##### II. The Proposed Rule

In the **Federal Register** of January 21, 1999 (64 FR 3255 through 3257), FDA published a proposed rule to add the term "ultra" to describe tampons with a 15 to 18 g absorbency as measured by the syngyna test. The 90-day comment period closed on April 21, 1999.

The agency received nine comments from individuals, tampon manufacturers, one trade association, and one from a member of the U.S. Congress. Besides comments specific to use of the term "ultra", other comments addressed FDA's 1995 draft guidance document on the preparation of 510(k) premarket notifications for menstrual tampons (Ref. 1). Several comments recommended changing the currently used term for tampon absorbency less than 6 g, from "junior" to "light". A summary of the written comments and FDA's response to the comments is provided in section III of this document.

##### III. Response to Comments

1. Two comments from manufacturers supported the term "ultra". They noted that the term "ultra" is defined in Webster's Dictionary (and others) as "going beyond what is usual or ordinary" and "going beyond others". These comments also noted that menstrual tampons with this absorbency are called "Ultra Plus" in Canada. Comments from two other manufacturers did not favor the term "ultra" for this tampon absorbency. They argued that "ultra" implies the product is more compact in size, more concentrated, more environmentally sound, or possibly superior. The comments noted that "ultra" is a proprietary term carrying one or more of these meanings for a variety of other household products, such as dishwashing detergents and sanitary napkins. These manufacturers proposed the terms "extra" or "extra plus".

FDA concludes that the term "Ultra" is suitable to identify the absorbency of tampons in the range of 15 to 18 g. FDA



believes that the term "Ultra" fits more clearly within the current scheme of tampon absorbency terminology than the terms "extra" or "extra plus". The term "ultra" better conveys to the consumer absorbency abilities that are beyond "Super" and "Super Plus" and is less confusing to consumers than the terms "extra" or "extra plus".

Manufacturers must now define this absorbency in their labeling along with the other absorbency categories to help consumers understand the meaning of this new term. As before, labeling will continue to be required to inform consumers that they should use the lowest absorbency suitable for their needs, as well as alternating use of tampons with use of menstrual pads. FDA does not permit manufacturers to promote tampons for a wear time longer than 8 hours.

2. Five comments suggested changes in tampon labeling related to the wording of the consumer information on TSS. At present, under § 801.430(d)(2), the tampon labeling regulation requires that TSS incidence be reported in the package insert as 1 to 17 cases of TSS per 100,000 menstruating women and girls per year. These five comments requested that this labeling be revised to reflect more recent data that indicate the rate of TSS has declined. There were also various comments on FDA's draft guidance document on preparing 510(k) premarket notifications on menstrual tampons, dated May 25, 1995 (Ref. 1).

These comments were beyond the scope of the proposed rule. FDA recognizes that TSS incidence in the United States has dropped since this labeling regulation was issued in 1989. See response to comment number 6. FDA will consider these suggestions for revisions to the labeling regulation to update the TSS incidence information. Regarding the second set of comments, FDA is currently working to improve the 1995 510(k) guidance document, and the suggested changes will be considered during that process. FDA intends to issue a draft updated guidance document within a few months.

3. Five comments suggested changing the absorbency term "junior", used for tampons with the lowest absorbency (less than 6 g), to "light". They suggested that the term "junior" implied such tampons were only for young teenagers.

This comment also was beyond the scope of this rulemaking. However, FDA agrees that the term "light" is more appropriate than "junior" for tampons with absorbency less than 6 g. A proposed rule to change the term

"junior" to "light" appears elsewhere in this issue of the **Federal Register**.

4. One comment asked why FDA did not propose a new term for tampon absorbency in the 15 to 18 g range when the other terms were issued in the regulation in 1989.

The intent of the 1989 regulation was to standardize terms currently in use so that consumers had clear information to make the best choices regardless of which brand they purchased. Although the absorbencies varied across brands, most manufacturers had no more than four different absorbencies of tampons on the market. Most companies chose to modify their products to match the standardized absorbency categories and keep the established terms. Immediately prior to issuance of the labeling regulation in 1989, only one marketed tampon was in the 15 to 18 g range. The manufacturer of this tampon chose to reduce its absorbency to 12 to 15 g and continue to use the term "super plus". In the preamble to the final regulation standardizing absorbency terms, FDA stated that anyone who wished to market a tampon that absorbs more than 15 g of fluid would be required to submit a 510(k). The agency would then determine whether the labeling submitted for the device was appropriate and whether the tampon required premarket approval under section 515 of the act (21 U.S.C. 360e). FDA did receive and clear a 510(k) for such a product earlier this year.

5. One comment asked how FDA would institute monitoring procedures for tracking the potential risk of increase in TSS cases.

FDA requires laboratory testing for all tampon products, as appropriate, depending on changes to materials or design. The agency already has in place Mandatory Device Reporting (MDR) requirements for manufacturers to identify and monitor reports of serious events related to device use, including menstrual TSS. In 510(k) premarket notifications, manufacturers of tampons with 15 to 18 g absorbency will provide FDA with their specific plans for monitoring trends in TSS complaints with use of their own tampon brands. The manufacturer of the product already cleared has such a plan in place. In the postmarket setting and as part of its regular MDR Program and User Facility Reporting Program, FDA will actively review any reports received on adverse events, as well as the Centers for Disease Control and Prevention (CDC) reports on menstrual-TSS.

CDC has tracked TSS reports in the United States for 20 years, and produces periodic morbidity/mortality reports. CDC recently has published a TSS

surveillance update, reviewing reports from 1979 to 1996 (Ref. 2). These reports show a marked drop in TSS cases in the early 1980's with a relatively flat, extremely low number of TSS reports since approximately 1986. For instance, in 1996, there were five definite and four probable menstrual-related TSS cases reported to CDC.

The agency also notes that tampons with an absorbency as high as 18 g are currently marketed in other countries with very low TSS rates (Ref. 3). It appears that a number of factors may play a role in the etiology and risk of menstrual-related TSS, including tampon materials, continuous tampon use versus alternating use between tampons and menstrual pads, the presence of oxygen in the vaginal environment, and awareness of TSS symptoms and seeking early treatment. Standardized absorbency terms are intended to minimize the risk of menstrual-TSS with tampon use. This rule is consistent with purpose of the 1989 regulation, which is to ensure that standardized labeling gives women the information they need to make appropriate choices among all brands. FDA does not believe that this final rule will increase the risk of TSS for women who use tampons in accordance with the labeling.

6. One comment asked about the steps that might be taken to improve consumer decisionmaking about choosing the appropriate tampon absorbency.

FDA agrees that women should have a good understanding about tampon absorbency in order to make the best possible choice when purchasing tampons. In the United States, there are several public awareness initiatives in place. For nearly 20 years, FDA, CDC, and tampon manufacturers have all played a part in this process. Education programs at the local level have been contributing partners, as well. FDA believes that the current low TSS rates in the United States are a reflection of these highly effective public awareness initiatives. FDA expects that these programs, coupled with good tampon labeling, will ensure continued good choice patterns among tampon users in the United States.

#### IV. Environmental Impact

The agency has determined under 21 CFR 25.30 (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.



V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. There currently are no small entities marketing a tampon of this absorbency. Any small entity that decided to enter the market with this product would incur no additional costs because of this rule because the small entity would already be required to identify the absorbency ranges of its tampons.

The agency therefore certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted

annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule does not contain information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). Although the agency submitted the proposed labeling for public comment as an information collection in the proposed rule, FDA now concludes that the labeling requirement is not subject to review by OMB because it does not constitute a “collection of information” under the PRA. Rather, the proposed labeling is a “public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public” (5 CFR 1320.3(c)(2)).

VIII. References

The following references have been placed on display in the Docket Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Guidance for the Content of Premarket Notifications for Menstrual Tampons (draft, May 25, 1995).

2. Hajjeh, R. A., A. Reingold, A. Weil, K. Shutt, A. Schuchat, and B. Perkins, “Toxic Shock Syndrome in the United States: Surveillance Update, 1979–1996,” *Emerging Infectious Diseases*; vol. 5, no. 6, pp. 807–810, November/December 1999.

3. TSS rates in Canada, U.K., Germany—where 15 to 18 g tampons are already available, Medical Affairs and Regulatory Affairs at Personal Products Co. at Skillman, NJ.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drug, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:
- Authority:** 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.
2. Section 801.430 is amended in paragraph (e)(1) by revising the table to read as follows:

§ 801.430 User labeling for menstrual tampons.

	*	*	*	*	*
(e)	*	*	*		
(1)	*	*	*		

Ranges of absorbency in grams <sup>1</sup>	Corresponding term of absorbency
6 and under	Junior absorbency.
6 to 9	Regular absorbency.
9 to 12	Super absorbency.
12 to 15	Super plus absorbency.
15 to 18	Ultra absorbency.
Above 18	No term.

<sup>1</sup> These ranges are defined, respectively, as follows: Less than or equal to 6 grams (g); greater than 6 g up to and including 9 g; greater than 9 g up to and including 12 g; greater than 12 g up to and including 15 g; greater than 15 g up to and including 18 g; and greater than 18 g.

\* \* \* \* \*

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00-26248 Filed 10-17-00; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 862

[Docket No. 00P-1280]

#### Medical Devices; Exemption From Premarket Notification; Class II Devices; Triiodothyronine Test System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing an order granting a petition requesting exemption from the premarket notification requirements for the triiodothyronine test system with certain limitations. This rule will exempt from premarket notification the triiodothyronine test system intended for measuring the hormone triiodothyronine in serum and plasma. FDA is publishing this order in accordance with procedures established by the Food and Drug Administration Modernization Action of 1997 (FDAMA).

**DATES:** This rule is effective October 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Heather S. Rosecrans, Center for Devices, and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Background

Under section 513 of the Federal Food, and Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. The FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94-295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101-629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient

to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is substantially equivalent within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105-115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide

reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

##### II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at <http://www.fda.gov/cdrh> or by facsimile through CDRH Facts-on-Demand at 1-800-899-0381 or 301-827-0111. Specify "159" when prompted for the document shelf number.

##### III. Petition

On April 26, 2000, FDA received a petition requesting an exemption from premarket notification for the triiodothyronine test system. The triiodothyronine test system is currently classified under 21 CFR 862.1710. In the **Federal Register** of July 11, 2000 (65 FR 42706), FDA published a notice announcing that this petition had been received and provided an opportunity for interested persons to submit comments on the petition by August 10, 2000. FDA received no comments. FDA has reviewed the petition and has determined that the triiodothyronine test system intended for measuring the hormone triiodothyronine in serum and plasma does meet the criteria for exemption from the notification requirements. This is the only type of triiodothyronine test system of which FDA presently has any knowledge. The exemption is limited to triiodothyronine test systems of the type described and is also subject to the general limitations on exemptions from premarket notification for clinical chemistry and clinical toxicology devices as described in 21 CFR 870.9. For example, the exemption will not apply to devices of this type that present new indications, novel designs, or alternative materials. The exemption also will not apply if the

device is intended for over-the-counter use.

#### IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule will relieve a burden and simplify the marketing of these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

#### VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

#### List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

#### PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.1710 is amended by revising paragraph (b) to read as follows:

#### § 862.1710 Total triiodothyronine test system.

\* \* \* \* \*

(b) *Classification.* Class II. This device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

Dated: October 12, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–26740 Filed 10–17–00; 8:45 am]

**BILLING CODE 4160–01–F**

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

#### 33 CFR Parts 110 and 165

[CGD05–00–048]

RIN 2115–AA98

#### Safety Zone and Anchorage Regulations; Delaware Bay and River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Army Corps of Engineers will begin dredging parts of the Delaware River including the Marcus Hook Range Ship Channel. Because of the dredging operations, temporary additional requirements will be imposed in Marcus Hook Anchorage (Anchorage 7), the Deepwater Point Anchorage (Anchorage 6), and the

Mantua Creek Anchorage (Anchorage 9). The Coast Guard is also establishing a temporary moving safety zone around the dredge vessel *Essex* that will be working in the Marcus Hook Range Ship Channel adjacent to Anchorage 7.

**DATES:** This rule is effective from October 3, 2000 until November 30, 2000.

**ADDRESSES:** Documents indicated in this preamble as being available are part of docket CGD05–00–048 and are available for inspection or copying at Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Wade Kirschner or Senior Chief Robert Ward, Coast Guard Marine Safety Office/Group Philadelphia, (215) 271–4889 or (215) 271–4888.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

A Notice of Proposed Rule Making (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. U.S. Army Corps of Engineers, Philadelphia District, informed the Coast Guard on September 13, 2000 that dredging operations would commence on October 1, 2000. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic.

##### Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of the Marcus Hook Range Ship Channel. The dredging is needed to maintain the project depth of the channel. Similar dredging is conducted each year. This period of dredging begins October 1, 2000 and is anticipated to end on November 30, 2000.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel may

divert through a portion of anchorage 7 to maintain a 150 foot radius around dredging operations. This necessitates additional requirements/restrictions on the use of Anchorage 7. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessel *Essex*. The safety zone will ensure mariners remain a safe distance from the potentially dangerous dredging equipment.

#### Discussion of the Regulation

33 CFR 110.157(b)(2) allows vessels to anchor for up to 48 hours in the anchorages listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7 during dredging operations, the Coast Guard is adding a temporary paragraph in 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 6, 7 and 9.

Vessels desiring to use the Marcus Hook Anchorage (Anchorage 7) must seek permission from the Captain of the Port at least 24 hours in advance. Only one vessel will be allowed to anchor in Anchorage 7 at one time, and the Captain of the Port will grant permission on a "first come, first serve basis." A vessel desiring to use anchorage 7 will be directed to a location within the anchorage, and no vessel may remain in the anchorage beyond twelve hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantua Creek, because they are the closest anchorages to Anchorage 7. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as good as in Anchorage 7. As larger vessels do not typically use these anchorages, any vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and any vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent the vessel they're attending from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 by the dredge vessel *Essex*.

The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7, and must operate at the minimum safe speed necessary to maintain steerage. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

#### Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that choose to anchor in Anchorages 6 and 9. Alternate anchorages, such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorage A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected are less than 700 feet and thus will not be required to have tugs alongside.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This regulation's greatest impact is on vessels greater than 700 feet in length which choose to anchor in Anchorages 6 and 9 and will have virtually no

impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(f) and (g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

**List of Subjects****33 CFR Part 110**

Anchorage grounds.

**33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 and 33 CFR part 165 as follows:

**PART 110—[AMENDED]**

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. A new temporary § 110.157(b)(11) is added to read as follows:

**§ 110.157 Delaware Bay and River.**

\* \* \* \* \*

(b) \* \* \*

(11) *Additional requirements and restrictions for the anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section.*

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a “first-come, first-serve” basis. The Captain of the Port will allow only one vessel at a time to be at anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that any tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) *Effective Dates.* This paragraph (b)(11) is effective from October 3, 2000 until November 30, 2000.

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

4. Add temporary § 165.T05–048 to read as follows:

**§ 165.T05–048 Safety Zone; Delaware Bay and River.**

(a) *Location.* The following area is a safety zone: All waters within the arc of a circle with a 150 yard radius having at its center dredging vessel *Essex* operating in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Captain of the Port and leave the safety zone immediately if the Captain of the Port so orders.

(3) Vessels may navigate in and through Anchorage 7 (Marcus Hook Anchorage) to the minimum extent necessary to stay clear of the safety zone. Vessels navigating in Anchorage 7 for this purpose shall do so at minimum speed to maintain steerage, unless otherwise directed by the Captain of the Port.

(4) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(5) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective dates:* This section is effective from October 3, 2000 to November 30, 2000.

Dated: October 3, 2000.

**T.C. Parr,**

*Captain, U.S. Coast Guard, Commander, Fifth U.S. Coast Guard District, Acting.*

[FR Doc. 00–26768 Filed 10–17–00; 8:45 am]

**BILLING CODE 4910–15–P**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 154**

[USCG–1999–5149]

RIN 2115–AF79

**Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils; Clarification**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Clarification to final rule.

**SUMMARY:** This document clarifies a preamble discussion to a final rule published in the **Federal Register** of June 30, 2000. The rule amended Coast Guard regulations requiring response plans for marine transportation-related (MTR) facilities that handle, store, or transport animal fats or vegetable oils. Specifically, this document clarifies the explanation for higher volume ports.

**DATES:** This document becomes effective on October 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** For questions on this clarification or the final rule, call Lieutenant Claudia Gelzer, Project Manager, Coast Guard, telephone 202–267–1983. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:****Clarification of Preamble to Final Rule**

On June 30, 2000, we published in the **Federal Register** the final rule titled “Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils” (USCG–1999–5149)[65 FR 40820]. In the preamble to that rule, on page 40822, we stated that higher volume port areas were designated based on the availability of response equipment on hand in those ports. After that publication, the Coast Guard received comments from the affected public requesting clarification of our high volume ports discussion.

We previously addressed this topic in an interim final rule, "Response Plans for Marine Transportation-Related Facilities" (58 FR 7330), that was published in the **Federal Register** on February 5, 1993. As stated in the interim rule, higher volume ports were actually designated based on the volume of all types of oil transported through those ports. Faster response times were established for those ports to encourage vessel and facility plan holders to concentrate larger quantities of response equipment as close as possible to locations having the highest probability of a significant spill incident. Over time, the industry has responded by stockpiling larger quantities of response equipment in those ports practicable for all plan holders regardless of the type of oil cargo carried.

Dated: October 12, 2000.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00-26766 Filed 10-17-00; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-00-224]

RIN 2115-AA97

#### **Safety Zone: Thunderbird Air Show, Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone for the Thunderbird Air Show Display to be held on Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY on October 28 & 29, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 10:30 a.m. on October 28, 2000 until 4:30 p.m. on October 29, 2000.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 7:30 a.m. and 4:00

p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Chris Stubblefield, Command Center, Group/Marine Safety Office Long Island Sound, New Haven, CT (203) 468-4428.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

##### **Background and Purpose**

The New York State Office of Parks, Recreation and Historic Preservation is sponsoring an Air Show display on Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY. The Air Show display will occur on October 28 & 29, 2000. The safety zone covers all waters of the Long Island Sound within a 3,000 foot by 12,000 foot area which will be located in approximate position: Northeast corner; 40°-55.0.5'N, 073°-16.40'W, Northwest corner; 40°-55.0.5'N, 073°-14.40'W, Southeast corner; 40°-54.55'N, 073°-16.40'W, Southwest corner; 40°-54.55'N, 073°-14.40'W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

##### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies

and procedures of DOT is unnecessary. This safety zone involves only a portion of Long Island Sound and entry into this zone will be restricted for 6 hours on October 28 and 29, 2000. Although this regulation prevents traffic from transiting this section of Long Island Sound, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses not-for-profit organizations that are independently owned and operated are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound from 10:30 a.m. until 4:30 p.m. on October 28 and 29, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

##### **Assistance for Small Entities**

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104-121], the Coast Guard wants to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Chief Chris Stubblefield at (203) 468-4428. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these

actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under Addresses.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub.L. 105-383.

2. Add temporary § 165.T01-CGD1-224 to read as follows:

#### § 165.T01-CGD1-224; Thunderbird Air Show, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 3,000 foot by 12,000 foot area located on Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY in approximate position: Northeast corner; 40° - 55.05'N, 073° - 16.40'W, Northwest corner; 40° - 55.05'N, 073° - 14.40'W, Southeast corner; 40° - 54.55'N, 073° - 16.40'W, Southwest corner; 40° - 54.55'N, 073° - 14.40'W, (NAD 1983).

(b) *Effective date.* This rule is effective from 10:30 a.m. on October 28, 2000 until 4:30 p.m. October 29, 2000.

(c) (1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U. S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Enforcement period.* This rule will be enforced from 10:30 a.m. until 4:30 p.m. on October 28 and 29, 2000 respectively.

Dated: October 5, 2000.

**David P. Pekoske,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 00-26769 Filed 10-17-00; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[CGD05-00-047]

RIN 2115-AA97

#### Safety Zone; Strategic Booming Exercise in the Cape May Harbor, Cape May, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary regulations in the Cape May Harbor, Cape May, NJ during a New Jersey Department of Environmental Protection oil spill booming test in the north end of the Cape May Harbor. This action is necessary to provide for the safety of life and property on navigable waters during the booming test. This action will restrict vessel traffic as the north end of the Cape May Harbor will be closed to all vessel traffic.

**DATES:** This rule is effective from 7 a.m. to 1 p.m. on October 19, 2000.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-00-047 and are available for inspection or copying at Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Wade Kirschner, Coast Guard Marine Safety Office/Group Philadelphia, (215) 271-4889.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. We were notified of the oil pollution booming test in the Cape May Harbor with insufficient time to publish an NPRM, allow for comments, and publish a final rule.

Under 5 U.S.C. 553 (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We were informed on September 7, 2000 that a strategic booming test would take place in the Cape May Harbor. Delaying the effective date of the rule would be contrary to the



public interest, since immediate action is needed to protect mariners against potential hazards associated with the temporary placement of boom across the north end of the Cape May Harbor.

#### Background and Purpose

The strategic booming exercise is in response to a 1996 oil spill that fouled the New Jersey shoreline from Manasquan to Cape May. The New Jersey Department of Environmental Protection commissioned a project to develop potential protection strategies for each tidal inlet occurring along the Atlantic Coast of New Jersey.

The thirteen tidal inlets along New Jersey's coastline are actually channels that divide the barrier islands into segments. The inlets are subject to reversing tidal currents, and are conduits for the volume of water that flows in and out of the bay/estuarine system during a tidal cycle called the tidal prism. It is through these conduits that oil spilled on open ocean waters could reach the sensitive resources, such as salt marshes, that occur along the bay/estuarine shorelines. Coastal tidal inlets are therefore focal points for designing strategies to protect these vital resources from spilled oil.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the booming exercise on October 19, 2000. Although this regulation prevents traffic from transiting portions of the Cape May Harbor during the event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. In addition, there is an alternate route out of the harbor through the Cape May Canal.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of fishing or recreational vessels intending to transit the north end of the Cape May Harbor.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and although the safety zone will apply to the entire width of the navigable channel, traffic will be able to exit the north end of the Cape May Harbor via the Cape May Canal. The oil spill prevention exercise has been well publicized by the New Jersey Department of Environmental Protection, which distributed flyers to the marinas and boaters located in the north end of the Cape May Harbor. In addition, before the effective period, the Coast Guard will issue maritime advisories to allow mariners to make alternative plans for transiting the affected areas.

#### Assistance for Small Entities

Under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we are willing to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsmen and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

#### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

#### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5;



49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105-383.

2. Add temporary § 165.T05-047 to read as follows:

**§ 165.T05-047 Safety Zone; Strategic Booming Exercise in the Cape May Harbor, Cape May, NJ.**

(a) Definitions. (1) *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Representative* is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia.

(b) *Location*. This rule establishes a safety zone to include all waters 100 feet in any direction from all booming equipment and any vessels participating in the strategic booming exercise. One end of the boom will start from the Coast Guard Buoy Yard (approximate position 38° 56' 90" N, 074° 53' 30" W) on the south side of the entrance to the North end of the Cape May Harbor and will extend out near the green can buoy number "3". From the green can marker buoy "3", the boom will extend across the navigable channel and be attached to the red flashing (2+1) day marker "C". From the day marker, the boom will extend to the north side of the north entrance to the Cape May Harbor and end near Snow's Fish Processing Plant (approximate position 38° 57' 20" N, 74° 53' 00" W). All coordinates reference Datum NAD 1983.

(c) *Regulations*. (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard Representative. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard Representative and leave the safety zone immediately if the Coast Guard Representative so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271-4940.

(4) The Coast Guard Representative will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(d) *Effective dates*. These regulations are effective from 7 a.m. to 1 p.m. on October 19, 2000.

Dated: September 20, 2000.

G.F. Adams,

*Captain, U.S. Coast Guard, Captain of the Port Philadelphia.*

[FR Doc. 00-26772 Filed 10-17-00; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD11-00-007]

RIN 2115-AE84

#### Regulated Navigation Area; San Pedro Bay, California

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising the Regulated Navigation Area for San Pedro Bay, California. Due to port expansion projects in the Ports of Los Angeles and Long Beach, the Coast Guard conducted a Port Access Route Study (PARS) which recommended, among other things, changes to the San Pedro Bay Regulated Navigation Area (RNA). The Coast Guard is also making minor changes to some vessel operational procedures and requirements to reflect the necessary modifications with respect to traffic management due to the port construction and expansion projects.

**DATES:** This rule is effective as of October 18, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD11-00-007] and are available for inspection or copying at Commander (Pmc-3), USCG PACAREA/D11, Bldg 50-6, Coast Guard Island, Alameda, CA 94501-5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Patricia Springer, Chief Vessel Traffic Management Section, 11th Coast Guard District, telephone (510) 437-2951; e-mail pspringer@d11.uscg.mil.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

In 1999, the Coast Guard conducted a Port Access Route Study (PARS), which we announced in a document published in the **Federal Register** on March 11,

1999 (63 FR 12140). A PARS was needed to evaluate the effects of port improvement projects for the ports of Los Angeles and Long Beach on navigational safety and vessel traffic management efficiency, and to recommend any necessary changes to existing routing measures. The Coast Guard completed the study in July 1999 and announced the results of this study in a Notice published in the **Federal Register** on May 19, 2000 (65 FR 31856). Among other things, this study recommended modifications to the precautionary areas, existing TSS's, and aids to navigation.

On July 21, 2000, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area; San Pedro Bay, California, in the **Federal Register** (65 FR 45328). The comment period ended September 5, 2000. We did not receive any comments on the proposed rule. No public hearing was requested, and none was held.

During the drafting of this Final Rule, a few minor changes were made to items discussed in the NPRM. The Coast Guard expects that these minor changes from the content of the NPRM will not impose a burden on the public.

1. In the Discussion of Regulation section of the NPRM, it correctly states that the length of the Long Beach Pilot area will be expanded approximately 1.7 nm to the south. Subsequently, in the same section, it states incorrectly that the Long Beach Pilot Area will be expanded to the south approximately 1.6 nm. This error in the NPRM is corrected in this final rule to reflect that the length of the Long Beach Pilot Area will be expanded approximately 1.7 nm to the south.

2. The second change corrects an error in the last paragraph of the Discussion of Regulation section of the NPRM. The sentence, "When a vessel drawing more than 50 feet \* \* \*" is corrected to read, "When a vessel 50 feet and greater \* \* \*"

3. The third change deals with the nomenclature used to designate the geographical coordinates of the RNA, Pilot Areas, Deep Water Routes, and the Middle Breakwater Area. The format used in the NPRM described the latitudes and longitudes in degrees, minutes and seconds. In contrast, the format used in the final rule describes latitudes and longitudes in degrees, minutes, and tenths of minutes. The format used in the final rule is easier to read and the NAD 1983 datum is accounted for throughout the regulation. Also, describing the coordinates for the RNA in this manner is consistent with the way the coordinates are published in the Los Angeles/Long Beach Traffic

Separation Scheme. See 65 FR 53,911 (Sep. 6, 2000) (to be codified at 33 CFR pt. 167).

4. The fourth and final change deals with the terms of the Proposed Regulation at § 165.1109(e)(5). The NPRM published "No vessel may enter the waters between Commercial Anchorage G and the Middle Breakwater \* \* \*" This Final Rule now refers to the specific vessels described in paragraph (d), General Regulations, which may not enter the waters between Commercial Anchorage G and the Middle Breakwater.

#### Regulatory Information

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. On September 6, 2000 the Coast Guard amended the Los Angeles/Long Beach Traffic Separation Scheme (TSS) to route commercial vessels farther offshore for safety and environmental protection reasons in the San Pedro Bay area. See 65 FR 53911. One of the amendments to the TSS expanded the Precautionary Area to match the shifted coordinates of the western and southern traffic lanes. This new Precautionary Area also coincides with the expanded coordinates for the RNA.

The RNA and the Precautionary Area establish the manner in which vessels transit through San Pedro Bay. As explained in the NPRM, the RNA has specific vessel operation requirements which are necessary because of hazardous conditions in the area. In order to enforce such requirements within the RNA, which now must have the expanded boundaries to match the TSS amendments, we are making this rule effective on the date of publication so that the RNA is in place as close as possible to the effective date of the TSS.

Also, because of these changes to the TSS and the RNA, a complete update of several local charts is required. Chart publication cannot occur until the RNA rule becomes final. Since these charts are essential to safe navigation in San Pedro Bay and the approaches of the Ports of Los Angeles—Long Beach, there is good cause to implement this final rule upon publication in the **Federal Register**.

#### Background and Purpose

The Commander, Eleventh Coast Guard District is modifying the San Pedro Bay RNA. As previously discussed, this change makes the RNA geographically the same as the precautionary area. A Precautionary Area is an internationally recognized

routing measure comprising an area within defined limits where ships must navigate with particular caution. By itself, a precautionary area does not impose specific maneuvering requirements on vessels. A Regulated Navigation Area (RNA) is a regulatory measure that defines an area, in which the Coast Guard has imposed specific vessel operating requirements because of the existence of hazardous conditions. Due to the quantity of vessel traffic and diversity of types of vessels transiting the approach to Los Angeles and Long Beach harbors, the Coast Guard thinks that the general guidance of a Precautionary Area is insufficient to ensure safe transit of the area. Therefore, in addition to establishing the Precautionary Area, the Coast Guard is also establishing an RNA, which covers the same area of waters and includes specific vessel operating procedures.

The following is a summary of the specific changes to the RNA:

- The southern boundary of the RNA is moved to the south approximately 2.2 nm to align with the new western traffic separation scheme. The southeastern corner of the RNA is shifted to the west approximately 1.8 nm on a bearing on 220 degrees T from the easterly most point of the existing Precautionary Area, to align with the new southern traffic separation scheme.
- The Los Angeles Pilot Area is expanded approximately 0.4 nm to the south-southeast.
- The Long Beach Pilot Area is expanded approximately 1.7 nm to the south.
- A Deep Water Traffic Lane approximately 3.27 nm long is established in the Los Angeles approach channel.
- A Deep Water Traffic Lane approximately 1.9 nm long is established in the Long Beach approach channel.

• A Deep Water Pilot Area is established just south of the Los Angeles Deep Water Traffic Lane. It is centered on position 33°39.00N, 118°13.19W, approximately 0.5 nm south of the southern terminus of the Los Angeles Channel and will be 1.0 nm in diameter.

In addition, this rule codifies the amended RNA into Title 33 Part 165 of the Code of Federal Regulations.

#### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and did not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The economic impact of this rule is so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation was unnecessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on any substantial number of entities, regardless of their size.

#### Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rule making process. No concerns or questions from small businesses were brought to our attention on this rule.

#### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 13132 and has determined that this regulation does not have federalism implications under that Order.

#### Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard considered whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome

alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities are affected by this rule, so it will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under this Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule does not concern an environmental risk to safety disproportionately affecting children.

### Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2-1, paragraph (34)(g), it has no significant environmental impact and it is categorically excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Revise § 165.1109 to read as follows:

### § 165.1109 San Pedro Bay, California—Regulated Navigation Area.

(a) *Applicability.* This section applies to all vessels unless otherwise specified. (Note: All geographic coordinates are defined using North American Datum 1983 (NAD 83)).

(b) *Deviations.* The Captain of the Port of Los Angeles-Long Beach or his or her designated representative may authorize a deviation from the requirements of this regulation when it is deemed necessary in the interests of safety.

(c) *Location.* (1) The San Pedro Bay Regulated Navigation Area (RNA) consists of the water area enclosed by the Los Angeles-Long Beach breakwater and a line connecting Point Fermin Light at 33°42.30'N, 118°17.60'W, with the following geographical positions:

Latitude	Longitude
33°35.50' N .....	118°17.60' W
33°35.50' N .....	118°09.00' W
33°37.70' N .....	118°06.50' W
33°43.40' N .....	118°10.80' W

(2) The San Pedro Bay RNA consists of the following named sub-areas, defined by lines connecting their respective geographic coordinates:

#### (i) The Los Angeles Pilot Area:

Latitude	Longitude
33°42.50' N .....	118°15.10' W (Los Angeles Light)
33°42.62' N .....	118°14.70' W
33°41.30' N .....	118°13.50' W
33°40.85' N .....	118°14.90' W
33°42.50' N .....	118°15.10' W

#### (ii) The Long Beach Pilot Area:

Latitude	Longitude
33°43.40' N .....	118°11.20' W (Long Beach Light)
33°43.40' N .....	118°10.80' W
33°41.50' N .....	118°10.22' W
33°40.52' N .....	118°10.22' W
33°40.52' N .....	118°11.82' W
33°41.50' N .....	118°11.82' W
33°43.40' N .....	118°11.20' W

#### (iii) The Los Angeles Deep Water Traffic Lane:

Latitude	Longitude
33°42.47' N .....	118°14.95' W
33°42.56' N .....	118°14.75' W
33°39.48' N .....	118°13.32' W
33°39.42' N .....	118°13.55' W
33°42.47' N .....	118°14.95' W

#### (iv) The Long Beach Deep Water Traffic Lane:

Latitude	Longitude
33°43.43' N .....	118°11.15' W
33°43.39' N .....	118°10.90' W
33°41.51' N .....	118°10.71' W
33°41.50' N .....	118°10.95' W
33°43.43' N .....	118°11.15' W

(v) *Los Angeles Deep Water Pilot Area:* A 0.5nm radius around 33°39.00' N, 118°13.19' W.

(d) *General Regulations.* The following regulations contained in paragraphs (d)(1) through (d)(3) of this section apply to power driven vessels of 1600 or more gross tons, a towing vessel of 8 meters (approximately 26 feet) or over in length engaged in towing, or vessels of 100 gross tons and upward carrying one or more passengers for hire.

(1) A vessel shall not exceed a speed of 12 knots through the water within the RNA.

(2) A vessel navigating within the RNA, shall have its engine(s) ready for immediate maneuver and shall operate its engine(s) in a control mode and on fuel that will allow for an immediate response to any engine order, ahead or astern, including stopping its engine(s) for an extended period of time.

(3) A vessel navigating within the RNA shall maintain a minimum separation from other vessels of at least 0.25 nm.

(e) *Specific Regulations—*(1) *Los Angeles Pilot Area.* (i) No vessel may enter the Los Angeles Pilot Area unless it is entering or departing Los Angeles Harbor entrance (Angels Gate).

(ii) Vessels entering the Los Angeles Pilot Area shall pass directly through without stopping or loitering except as necessary to embark or disembark a pilot.

(2) *Long Beach Pilot Area.* (i) No vessel may enter the Long Beach Pilot Area unless it is entering or departing Long Beach Harbor entrance (Queens Gate).

(ii) Vessels entering the Long Beach Pilot Area shall pass directly through without stopping or loitering except as necessary to embark or disembark a pilot.

(iii) Every vessel shall leave Long Beach Approach Lighted Whistle Buoy "LB" to port when entering and departing Long Beach Channel and departing vessels shall pass across the southern boundary of the Long Beach Pilot Area.

(3) *Los Angeles and Long Beach Deep Water Traffic Lanes.* When a vessel of 50 foot draft or greater is using the Los Angeles or Long Beach Deep Water Traffic Lane no other vessel shall enter the Deep Water Traffic Lane if it will result in a meeting, crossing or overtaking situation.

(4) *Los Angeles Deep Water Pilot Area.* When a vessel of 50 foot draft or greater is embarking or disembarking a pilot in the Los Angeles Deep Water Pilot Area no other vessel shall enter the Deep Water Pilot Area.

(5) Vessels described in paragraph (d) of this section may not enter the waters between Commercial Anchorage G and the Middle Breakwater as defined by an area enclosed by the line beginning at Los Angeles Main Channel Entrance Light 2 (33°42.70' N, 118°14.70' W), thence east along the Middle Breakwater to Long Beach Light (33°43.40' N, 118°11.20' W), thence south to (33°43.08' N, 118°11.26' W), thence westerly to (33°43.08' N, 118°12.26' W), thence southwesterly parallel to the breakwater to (33°42.43' N, 118°14.30' W), thence to the point of origin, unless such vessel is:

- (i) In an emergency;
- (ii) Proceeding to anchor in or departing Commercial Anchorage G;
- (iii) Standing by with confirmed pilot boarding arrangements; or,
- (iv) Engaged in towing vessels to or from Commercial Anchorage G, or to or from the waters between Commercial Anchorage G and the Middle Breakwater.

Dated: October 2, 2000.

**C.D. Wurster,**

*Captain, U.S. Coast Guard, Commander,  
Eleventh U.S. Coast Guard District, Acting.*

[FR Doc. 00-26773 Filed 10-17-00; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[MO 114-1114a; FRL-6885-6]

#### Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes, Dent Township

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing the redesignation of the lead nonattainment area in western Iron County, Missouri, to attainment of the National Ambient Air Quality Standards (NAAQS). We are approving the maintenance plan for this area including a consent order which was submitted with the redesignation request, and we are also approving the revision to Missouri's Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations rule which ensures the permanent and enforceable emission reductions by clarifying the emissions limits for the Doe Run Resource Recycling Facility, and removes the text which could have allowed this facility to resume operation as a primary smelter.

**DATES:** This rule is effective on December 18, 2000 without further notice, unless EPA receives adverse written comment by November 17, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Kim Johnson, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551-7975.

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a State Implementation Plan (SIP)?  
What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What requirements must be followed for redesignations to attainment?

What is being addressed in this document?

Have the requirements for approval of a SIP revision and redesignation to attainment been met?

What action is EPA taking?

#### **What Is a State Implementation Plan (SIP)?**

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### **What Is the Federal Approval Process for a SIP?**

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

#### **What does Federal approval of a state regulation mean to me?**

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### **What requirements must be followed for redesignation to attainment?**

Under section 307(d) of the CAA, we are required to promulgate designations of areas identifying their status with respect to attainment of the ambient standards described previously. We are required to determine whether each area is attaining the standard, not attaining the standard, or cannot be designated based on available information. Once an area is designated as nonattainment for a standard, it cannot be redesignated to attainment until the requirements of section 107(d)(3)(E) of the CAA are met. These requirements are discussed below, and include a revision to the SIP

to show how the state, in which the area is located, plans to maintain the standards in the future in the area to be redesignated to attainment.

#### **What is being addressed in this document?**

We are redesignating the nonattainment area in western Iron County, Missouri, to attainment for lead and taking final action to approve the submission for the Doe Run Resource Recycling Facility near Bixby, Missouri, as an amendment to the SIP.

We are also taking final action to approve the revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, as an amendment to the SIP.

The basis for our approval of the rule is described in this notice, and in more detail in the technical support document (TSD) prepared for this action. The TSD is available at the address identified above.

The purpose of the submittal is to meet the criteria under section 107(d)(3) of the Clean Air Act Amendments (CAAA) for redesignation of the nonattainment area in western Iron County to attainment for the lead standard.

The area was designated as nonattainment for lead in November 1991, effective January 6, 1992. The boundaries of the nonattainment area follow the Dent Township in western Iron County, Missouri. The major source of lead emissions in this nonattainment area is the Doe Run Resource Recycling Facility, near Bixby, Missouri.

Primary smelting of lead began at this location in 1968, but the current facility ceased operation as a primary smelter in 1988 and has been operating as a secondary smelter and resource recovery operation since 1991.

Section 107(d)(3) of the CAAA establishes the five requirements to be met before we can designate an area from nonattainment area to attainment. These are:

- A. The area has attained the NAAQS;
- B. The area has a fully approved SIP under section 110(k) of the act;
- C. We have determined that the improvement in air quality is due to permanent and enforceable emissions reductions;
- D. We have determined that the maintenance plan for the area has met the requirements of section 175A of the Act and;
- E. The state has met all requirements applicable to the area under section 110 and part D.

#### *Attainment of the NAAQS*

The state submittal provided ambient air monitor data showing that this area has consistently shown compliance with the NAAQS for lead since the second quarter of 1988. The NAAQS for lead is 1.5 micrograms per cubic meter ( $1.5 \mu\text{g}/\text{m}^3$ , maximum quarterly average). A quarterly average is considered a violation of the standard if it is at least  $1.6 \mu\text{g}/\text{m}^3$  when rounded to the tenths from the hundredths place when monitored.

Air dispersion modeling using the ISCST Version 3 dated June 24, 1999, was used to evaluate the concentration of lead resulting from operations at the Doe Run Resource Recycling Facility. The maximum concentration predicted by the model was a value of  $0.73 \mu\text{g}/\text{m}^3$  which is in compliance with the lead standard.

#### *Fully Approved SIP*

Missouri submitted part D nonattainment SIPs for the Doe Run Resource Recycling Facility and its predecessor in 1980 and in 1993 and 1994. The SIPs established emission, operational and work practice standards. These requirements included enforceable throughput and emission point limits, identified emission control projects that the facility would have to complete prior to processing lead concentration and producing primary lead, and established contingency measures to reduce fugitive emissions for the secondary process. The 1980 part D nonattainment SIP was approved on April 27, 1981, (46 FR 23412) and the 1993/1994 submission was fully approved under section 110(k) of the CAA, as a revision to the Missouri SIP on August 4, 1995 (60 FR 39851). A detailed discussion of the latter SIP revision can be found in the August 4, 1995, **Federal Register** notice.

#### *Permanent and Enforceable Emissions Reductions*

The permanent and enforceable emission reductions at the Doe Run Resource Recycling Facility include implementation of the part D nonattainment SIP, permanent closure of the primary lead smelting operation, controls on the secondary lead smelting operation, and the installation of reasonably available control technology and reasonably available control measures.

The revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, ensures the permanent and enforceable emission reductions by clarifying the emissions limits for the

facility and removing the text which could have allowed this facility to resume operation as a primary smelter. Because no violations of the lead standard have occurred since the facility ceased operation as a primary smelter in 1988, we believe that this clarification will make enforceable the operating scenario which has led to air quality improvements and attainment of the standard.

#### *Fully Approved Maintenance Plan*

The maintenance plan submitted as part of the SIP revision provides for maintenance of the relevant NAAQS in the area for at least ten years after the approval of redesignation to attainment.

The maintenance plan for the Doe Run Resources Recycling Facility addresses the monitoring network, the emission inventory, the maintenance demonstration, and verification of continued attainment, as described in more detail in the TSD. The plan also includes contingency measures, which require additional paving and roadway sweeping, and improvements to baghouse controls, to be implemented if monitored violations occur in the future. The contingency measures are specified in the consent order which was approved by MDNR and Doe Run.

Eight years after the redesignation, the state has committed to submit a revised maintenance plan demonstrating attainment for ten years following the initial ten-year period.

#### *Part D and Section 110*

The state has met these requirements by submitting and implementing the nonattainment plan to bring the area back into attainment and subsequently by submitting an appropriate maintenance plan to keep the area in attainment, as described previously in this notice and in the TSD.

#### *Rule Revision*

The revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, is an important part of the redesignation process for this nonattainment area. The changes to the rule include revising the emissions limits for the Doe Run Resource Recycling Facility and removing all text which could have allowed this facility to resume operation as a primary smelter. Another significant change modifies the title of the rule, consistent with the changes in the body of the rule, so that the rule applies to “specific” lead smelters (including secondary smelters) rather than addressing only “primary” lead smelters.

### Have the requirements for approval of a SIP revision and redesignation to attainment been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The state submittal also meets the criteria for redesignation to attainment in section 107(d)(3) of the CAA, as explained above and in the TSD.

### What action is EPA taking?

We are taking final action to approve the submission for the Doe Run Resource Recycling Facility near Bixby, Missouri, as an amendment to the SIP and redesignate the nonattainment area in western Iron County, Missouri, to attainment for lead.

We are also taking final action to approve the revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, as an amendment to the SIP.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial, and because the area has been attaining the lead standard since 1988 based on monitored data. Therefore, we do not anticipate any adverse comments.

### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule approves preexisting requirements under state law. In addition, the redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore, it does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or

significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

#### 40 CFR Part 81

Environmental protection, Air pollution control, Lead.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 27, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart AA—Missouri

2. Section 52.1320 is amended by:  
a. In the table to paragraph (c), Chapter 6, revise the entry for 10–6.120. The revision reads as follows:

#### § 52.1320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.120 .....	Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Installations.	October 30, 1998 .....	[insert FR cite] October 18, 2000.	

b. In the table to paragraph (d), by adding entry “Doe Run Resource Recycling Facility near Buick, Missouri”, immediately before the center heading “St. Louis City Incinerator Permits”.  
The addition reads as follows:

§ 52.1320 Identification of plan.

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
Doe Run Resource Recycling Facility near Buick, MO.	Consent Order .....	May 11, 2000 .....	October 18, 2000.	

c. In the table to paragraph (e), by adding entry for Doe Run Resource Recycling Facility at the end of the table.  
The addition reads as follows:

§ 52.1320 Identification of plan.

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submitted date	EPA approval date	Explanation
Doe Run Resource Recycling Facility near Buick, MO.	Dent Township in Iron County.	May 17, 2000 .....	October 18, 2000.	

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:  
**Authority:** 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. The table in § 81.326 entitled “Missouri Lead” is amended to revise

the first entry for Iron County to read as follows:

**§ 81.326 Missouri.**  
\* \* \* \* \*

Missouri—Lead				
Designated area	Designation		Classification	
	Date	Type	Date	Type
Iron County (part) Within boundaries of Dent Township	October 18, 2000 .....	Attainment.		

[FR Doc. 00-26501 Filed 10-17-00; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 00-2238; MM Docket No. 99-278; RM-9424]

**Radio Broadcasting Services; Susquehanna, PA and Conklin, NY****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Commission, at the joint request of Majac of Michigan, Inc., and Equinox Broadcasting Corporation, reallocates Channel 223A from Susquehanna, Pennsylvania, to Conklin, New York, and modifies Station WKGB-FM's license accordingly. We also reallocate Channel 263A from Conklin, New York, to Susquehanna, Pennsylvania, and modify Station WCDW(FM)'s license accordingly. See 64 FR 51284, September 22, 1999. Channel 223A can be reallocated to Conklin in compliance with the Commission's minimum distance separation requirements at Station WKGB-FM's requested site. The coordinates for Channel 223A at Conklin are 42-06-53 North Latitude and 75-51-16 West Longitude. Additionally, Channel 263A can be reallocated to Susquehanna in compliance with the Commission's minimum distance separation requirements at Station WCDW(FM)'s requested site. The coordinates for Channel 263A at Susquehanna are 42-02-30 North Latitude and 75-41-30 West Longitude.

**DATES:** Effective November 13, 2000.**FOR FURTHER INFORMATION CONTACT:**

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99-278, adopted September 20, 2000, and released September 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**Part 73 [AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 54, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 223A and removing Channel 263A at Conklin.

3. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 263A and removing Channel 223A at Susquehanna.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-26714 Filed 10-17-00; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF ENERGY****48 CFR Parts 931 and 970****RIN 1991-AB36****Acquisition Regulations; Costs Associated With Whistleblower Actions****AGENCY:** Department of Energy.**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (Department) is amending its acquisition regulations to address contractor defense, settlement and award costs associated with contractor employee whistleblower actions. This action implements a cost principle approach in the Department of Energy Acquisition Regulation (DEAR) which will apply to the Department's cost reimbursement contractors and subcontractors with a contract amount exceeding \$5,000,000.

**EFFECTIVE DATE:** This final rule is effective November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Terrence D. Sheppard, (202) 586-8193; e-mail terry.sheppard@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:**

I. Background.

II. Disposition of Comments

III. Procedural Requirements.

A. Review Under Executive Order 12866.

B. Review Under Executive Order 12988.

C. Review Under the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act.

F. Review Under Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995.

H. Congressional Notification.

**I. Background**

The purpose of this final rule is to establish the Department's policy on the reimbursement of contractor settlement, award and defense costs associated with contractor employee whistleblower actions. This policy will cover the Department's cost reimbursement contractors and subcontractors with a contract amount in excess of \$5,000,000. Costs associated with whistleblower actions filed by an employee in Federal and state courts, and with Federal agencies under 29 CFR Part 24, 48 CFR Subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239 will be subject to the reimbursement provisions of the new regulation.

This action grows out of rulemaking notices published on January 5, 1998 (63 FR 386) and March 24, 1999 (64 FR 14206). The first notice published for comment a proposed rule to create a whistleblower costs clause. The second notice reopened the comment period for an alternate proposal using a cost principle approach.

The alternate proposal was the result of a number of factors, including: (1) The Department's experience in a few high profile whistleblower actions; (2) further review of the practices of the rest of the Federal Government with this cost category; (3) a Department effort to reduce the number of cost clauses in DEAR Part 970 in favor of a cost principle approach (notice of proposed rule published June 14, 2000 (65 FR 37335)); and (4) the comments received in response to the initial proposed rule.

For the reasons stated below, the Department has now concluded that the cost principle approach, which provides contracting officers with greater flexibility in making determinations on a case-by-case basis, is the best approach for the circumstances facing the Department and its facility management contractors. However, the Department has modified its initial cost principle proposal in response to some of the comments received concerning that proposal.

**II. Disposition of Comments**

Two sets of comments were received in response to the January 5, 1998, notice of proposed rulemaking and five sets of comments were received in response to the March 24, 1999, notice to reopen the comment period. Except



for one set of comments from another Federal agency, all comments were from the Department's contractors.

#### *Contract Cost Clause Approach*

Both sets of comments on the proposed cost clause pointed out that the result of the proposal to reimburse settlement costs, while excluding costs where an adverse determination is made, would provide a financial incentive for the Department's contractors to settle any employee claim of retaliation, no matter how lacking in merit, rather than risk an adverse determination and the disallowance of costs. The comments also asserted that such a liberal policy for settlement of questionable claims would encourage frivolous claims.

It was, in part, as a result of these comments that the Department proposed the alternate cost principle approach providing contracting officers with greater flexibility in making case-by-case determinations based on the facts of each case. In a case-by-case approach, costs resulting from unlawful or egregious contractor conduct would be disallowed, while costs resulting from the exercise of prudent business judgment by the contractor would be allowable.

#### *Cost Principle Approach*

Three of the contractors commented that the alternate proposal would create an administrative burden and unnecessary and unallowable expense, and they urged that the final regulation not be expanded to labor cases beyond whistleblower retaliation claims. All of the contractor comments argued that the existing contract clauses and cost principle regulations provided sufficient coverage for labor settlements and litigation costs.

The Department agrees that the regulation should not be expanded to cover all labor cases and the final regulation covers only employee whistleblower actions alleging a retaliatory act.

#### *Final Rule*

The final rule creates a cost principle regulation to be added to 48 CFR (DEAR) Part 931 and incorporated by reference in 48 CFR (DEAR) Subpart 970.31. Contractors and subcontractors covered by this regulation are those with contracts for an amount in excess of \$5,000,000. The regulation requires contracting officers to determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and relevant facts and circumstances, including

federal law and policy prohibiting reprisal against whistleblowers, at the conclusion of the employee whistleblower claim. The cost principle addresses only the costs associated with whistleblower retaliation claims filed in Federal and state courts and with Federal agencies under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239.

The Department recognizes that a potential disadvantage of a case-by-case approach is unwarranted variation in cost allowability determinations in cases involving similar circumstances. Therefore, in order to promote an evenhanded approach and to avoid unwarranted variation, the Department will name a member of the Office of General Counsel who will consult with representatives from the Office of Procurement and Assistance Management, the Office of Environment, Safety and Health, and other Headquarters program offices on whistleblower costs. The Department's contracting officers will be required to report their final allowability determinations, and the analysis or basis for their determinations, to the Office of Procurement and Assistance Management, which will collect that information to determine whether additional guidance to the field is necessary. The collected information will also be a resource for providing advice to contracting officers. Internal guidance is being issued to establish procedures and points of contact for consulting and reporting purposes.

This cost principle will be effective in contracts awarded or executed by the Department after the effective date of this regulation. Whistleblower costs clauses already contained in current contracts will continue to be effective unless a contract modification is executed deleting the clause in favor of cost principle coverage.

Since the Department published the January 5, 1998, notice and the March 24, 1999, notice, the National Defense Authorization Act for FY 2000 (Pub.L. 106-65) reorganized the Department. Consistent with that Act, the Department has amended the authority citation for 48 CFR (DEAR) Parts 931 and 970 to include the citation for that Act.

### **III. Procedural Requirements**

#### *A. Review Under Executive Order 12866*

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this final rule was

not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

#### *B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this regulation meets the relevant standards of Executive Order 12988.

#### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment unless the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities." DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose this procurement rule for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this rulemaking, and no regulatory flexibility analysis has been prepared.

#### *D. Review Under the Paperwork Reduction Act*

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

#### *F. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking, which provides guidance on the reimbursement of certain contractor legal defense costs, does not

impact any state, local or tribal government.

#### *H. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this final rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 48 CFR Parts 931 and 970.**

Government procurement.

Issued in Washington, D.C. on October 2, 2000.

**T.J. Glauthier,**  
*Deputy Secretary.*

For the reasons set out in the preamble, chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

#### **PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for Part 931 continues to read as follows:

**Authority:** 42 U.S.C. 7101, *et seq.*; 40 U.S.C. 486(c); 50 U.S.C. 2401, *et seq.*; 42 U.S.C. 2201.

2. Section 931.205-47 is added to read as follows:

##### **931.205-47 Costs related to legal and other proceedings. (DOE coverage-paragraph (h)).**

(h) Costs Associated with Whistleblower Actions.

(1) Definitions for purposes of this paragraph (h):

*Covered contractors and subcontractors* means those contractors and subcontractors with contracts exceeding \$5,000,000.

*Employee whistleblower action* means any action filed by an employee in Federal or state court for redress of a retaliatory act by a contractor and any administrative procedure initiated by an employee under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239.

*Retaliatory act* means a discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected as a whistleblower activity by a Federal or state statute or regulation.

*Settlement and award costs* means defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement

for a complainant employee's legal counsel.

(2) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the contracting officer:

(i) May authorize reimbursement of costs on a provisional basis, in appropriate cases;

(ii) Must consult with the Office of General Counsel whistleblower costs point of contact, who will consult with other Headquarters points of contact as appropriate, before making a final allowability determination; and

(iii) Must determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and the relevant facts and circumstances, including federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.

(3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.

(4) If a contracting officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

#### **PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

3. The authority citation for Part 970 continues to read as follows:

**Authority:** Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); and National Nuclear Security Administration Act (50 U.S.C. 2401, *et seq.*)

4. Section 970.3102-20, Cost prohibitions related to legal and other proceedings, is amended by adding paragraph (c), Costs Associated with Whistleblower Actions, to read as follows:

##### **970.3102-20 Costs related to legal and other proceedings.**

\* \* \* \* \*

(c) Costs Associated with Whistleblower Actions. Section

931.205–47(h) of this chapter is applicable to management and operating contracts under this part and must be included in the contract's cost reimbursement subcontracts.

[FR Doc. 00–26333 Filed 10–17–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AE87

#### Endangered and Threatened Wildlife and Plants: Threatened Status for the Colorado Butterfly Plant (*Gaura neomexicana* ssp. *coloradensis*) From Southeastern Wyoming, Northcentral Colorado, and Extreme Western Nebraska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have determined threatened status under the Endangered Species Act of 1973, as amended, for *Gaura neomexicana* ssp. *coloradensis* (Colorado butterfly plant). A short-lived, perennial herb, *G. n.* ssp. *coloradensis* is endemic to moist soils in mesic or wet meadows of floodplain areas in north central Colorado, extreme western Nebraska, and southeastern Wyoming. This subspecies occurs primarily in habitats created and maintained by streams active within their floodplains, with vegetation that is relatively open and not overly dense or overgrown. The primary threats to *G. n.* ssp. *coloradensis* is the indiscriminate spraying of broadleaf herbicides and the disturbance of riparian areas that contain native grasses due to agricultural conversion, water diversions, channelization, and urban development.

**EFFECTIVE DATE:** November 17, 2000.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001.

**FOR FURTHER INFORMATION CONTACT:** Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772/2374; facimile 307/772–2358.

#### SUPPLEMENTARY INFORMATION

#### Background

*Gaura neomexicana* ssp. *coloradensis* was initially described as *G. coloradensis* by Rydberg (1904) based on material collected near Fort Collins, Colorado, in 1895. Munz (1938) transferred *G. coloradensis* to *G. neomexicana* and reduced it to variety *coloradensis*. This taxon is now recognized as *G. n.* ssp. *coloradensis* (Raven and Gregory 1972).

*Gaura neomexicana* ssp. *coloradensis* is a perennial herb that lives vegetatively for several years before bearing fruit once and then dying. It has one or a few reddish, hairy stems that are 50–80 centimeters (cm) (2–3 feet (ft)) tall. The lower leaves are lance-shaped with smooth or wavy-toothed margins and average 5–15 cm (2–6 inches (in.)) long, while those on the stem are smaller and reduced in number. Flowers are arranged in a branched, elongate pattern above the leaves. Only a few flowers are open at any one time and these are located below the rounded buds and above the mature fruits. Individual flowers are 5–14 millimeters ( $\frac{1}{4}$ – $\frac{1}{2}$  in.) long with four reddish sepals (modified leaves surrounding the flower) and four white petals that turn pink or red with age. The hard, nutlike fruits are 4-angled and have no stalk. Nonflowering plants consist of a stemless, basal rosette of oblong, hairless leaves 3–18 cm (1–7 in.) long (Marriott 1987; Fertig 1994; Fertig *et al.* 1994).

*Gaura neomexicana* ssp. *coloradensis* occurs on subirrigated, alluvial (stream deposited) soils on level or slightly sloping floodplains and drainage bottoms at elevations of 1,524–1,951 meters (5,000–6,400 ft). Colonies are often found in low depressions or along bends in wide, active, meandering stream channels a short distance upslope of the actual channel. The plant requires early-to mid-succession riparian (river bank) habitat. It commonly occurs in communities dominated by *Agrostis stolonifera* (redtop) and *Poa pratensis* (Kentucky bluegrass) on wetter sites, and *Glycyrrhiza lepidota* (wild licorice), *Cirsium flodmanii* (Flodman's thistle), *Grindelia squarrosa* (curlytop gumweed), and *Equisetum laevigatum* (smooth scouring rush) on drier sites. Both these habitat types are usually intermediate in moisture between wet, streamside communities dominated by sedges (*Carex* spp.), rushes (*Juncus* spp.), and cattails (*Typha* spp.), and dry, upland shortgrass prairie. Typical *G. n.* ssp. *coloradensis* habitat is open, without dense or overgrown vegetation. *Salix exigua* (coyote willow) and

*Cirsium arvense* (Canada thistle) may become dominant in *G. n.* ssp. *coloradensis* habitat that are not periodically flooded or otherwise disturbed. The plant occurs on soils derived from conglomerates, sandstones, and tuffaceous mudstones and siltstones of the Tertiary White River, Arikaree, and Oglalla Formations (Love and Christiansen 1985). These soils are common in eastern Colorado and Wyoming.

*Gaura neomexicana* ssp. *coloradensis* is an early successional plant (although probably not a pioneer) adapted to use stream channel sites that are periodically disturbed. Historically, flooding was probably the main cause of disturbances in the plant's habitat, although wildfire and grazing by native herbivores also may have been important. Although flowering and fruiting stems may undergo increased mortality because of these events, vegetative rosettes appear to be little affected (Mountain West Environmental Services 1985). However, the survival rate of the vegetative rosettes appears to be very dependent on available soil moisture. In wet years, such as the past few years, a large number of rosettes have survived; however, in dry years or during extended droughts, fewer rosettes appear to survive to reach the size necessary for flowering and fruiting. Because the long-term viability of this taxa relies on successful flowering and fruiting, as well as the difficulty in identifying small rosettes, only the flowering plants are counted to estimate population size and trends. The establishment and survival of seedlings appears to be enhanced at sites where tall and dense vegetation has been removed by some form of disturbance. In the absence of occasional disturbance, the plant's habitat can become choked out by dense growth of willows (*Salix* spp.), grasses (including red top (*Agrostis stolonifera*)), baltic rush (*Juncus balticus*), and exotic plants (such as Canada thistle (*Cirsium arvense*) and leafy spurge (*Euphorbia esula*)), which prevents new seedlings from becoming established and replacing plants that have died (Floyd 1995a; Fertig 1996).

Little is known about the historical distribution of *Gaura neomexicana* ssp. *coloradensis*. Prior to 1984, no extensive documentation of the plant's range had been conducted. The plant was known from several historical (and presumably extirpated (Fertig 1994)) locations in southeastern Wyoming, and at least four historical (and presumably extirpated (Fertig 1994)) locations in northern Colorado; and from three extant populations in Laramie County,

Wyoming, and Weld County, Colorado. In 1979, the total known population size was estimated in the low hundreds (Dorn 1979). Intensive range-wide surveys from 1984 to 1986 resulted in the discovery or confirmation of more than 20 populations in Wyoming, Colorado, and Nebraska, containing approximately 20,000 flowering individuals (Marriott 1987). Additional surveys since 1992 have resulted in the discovery of additional populations in Wyoming and Colorado (Fertig 1994; Floyd 1995b).

All currently known populations are within a small area (6,880 hectares (ha) or 17,000 acres (ac)) in southeastern Wyoming, western Nebraska, and north-central Colorado. Two of the populations occur on F.E. Warren Air Force Base in Cheyenne, Wyoming, and five small populations on State land (Chambers Preserve, CO; Oliver Reservoir State Recreation Area, NE; and state school trust land, WY). One population occurs on the Meadow Springs Ranch, northern Colorado (owned by City of Fort Collins). The remaining populations occur on private lands.

Extensive surveys were conducted during 1998 to document the status of previously known populations at 14 sites in Wyoming and Colorado (Fertig 1998b). All 14 sites still supported populations of *Gaura neomexicana* ssp. *coloradensis*. Repeated survey information led Fertig (1998b) to conclude that 10 of these populations were either relatively stable or increasing over the long term. Fertig (1998b) estimated the entire population of this taxon to contain between 47,000 and 50,000 reproductive plants. Twelve previously known populations were not surveyed in 1998, so their current status is unknown. Three of these populations were surveyed from 1989 until 1992 and were found to contain only 807 reproductive plants (Fertig 1998b). However, four populations in Colorado and five in Wyoming identified in previous surveys had not been relocated since 1986 and may be extirpated. Thus, of 26 previously and currently known populations, 9 may be extirpated; 3 are probably small, but have not been surveyed since 1992; 4 are still extant, but declining; and 10 are stable or increasing.

#### Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be

endangered, threatened, or extinct in the United States. This report (House Document No. 94-51) was presented to Congress on January 9, 1975, and included *Gaura neomexicana* ssp. *coloradensis*. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act, and our intention to review the status of the reported plant species.

On June 16, 1976, we published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Gaura neomexicana* ssp. *coloradensis*, to be endangered species under section 4 of the Act. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), we published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480), which included *Gaura neomexicana* ssp. *coloradensis* as a Category 1 candidate species. Category 1 candidates were formerly defined as species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of a proposed rule was precluded by other listing activities of higher priority. This subspecies was mistakenly left out of the NOR published November 28, 1983 (48 FR 53640), but its status was republished in subsequent NORs published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144).

On February 28, 1996, we published a NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. That notice included as candidates only those species meeting the former definition of category 1. *Gaura neomexicana* ssp. *coloradensis* was included as a candidate in this notice and has retained that status in the subsequent NOR, published in the **Federal Register** on September 19, 1997 (62 FR 49384).

As part of a settlement agreement in *Fund for Animals et al. v. Lujan et al.* (D.D.C. Civ. No. 92-800), the proposed rule to list this subspecies as threatened was published in the **Federal Register** on March 24, 1998 (63 FR 14060). The comment period on the proposed rule to list *Gaura neomexicana* ssp. *coloradensis* was reopened in the **Federal Register** on May 17, 2000 (65 FR 31298), to accommodate the public notice requirement of the Act to consider any new scientific information.

On January 18, 1982, we signed a Memorandum of Understanding with the Commander of the F.E. Warren Air Force Base to ensure continued survival of the two populations of *Gaura neomexicana* ssp. *coloradensis* that occur on the base. The agreement has been updated several times since 1982. In 1990 a Research Natural Area was established to include all the known naturally occurring populations on the base. The 1992 Memorandum of Understanding also included The Nature Conservancy, supported demographic studies of the *G. n.* ssp. *coloradensis* populations on the base, and provided for ongoing protective efforts. The most recent Memorandum of Agreement (signed March 31, 1999, and effective through December 31, 2003) supports continued protection of the plant populations on the base, development of a weed control plan, and research on reproduction, genetic variability, and other ecological and biological aspects of the plant.

We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule and to incorporate information obtained through the public comment periods. This additional information did not alter our decision to list the subspecies.

#### Summary of Comments and Recommendations

In the March 24, 1998, proposed rule (63 FR 14060) and the May 17, 2000, reopening of the comment period (65 FR 31298), we requested interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published announcements of the proposed rule in three local newspapers (Fort Collins Coloradoan, the Wyoming Tribune Eagle, and the Western Nebraska Observer) on May 18 and 19, 2000, inviting public comment.

We received a total of ten comments (four from private organizations, four from agricultural operations, one from State Government, and one from a private individual) that are discussed below. Of these comments, two were provided as supplements to comments already provided during the initial comment period.

*Issue 1:* Two commenters suggested we take an ecosystem approach and adopt a program that would conserve several species, including Preble's meadow jumping mouse (*Zapus hudsonius preblei*), even if development of such a program leads to delays in protection for the plant. The commenter also indicated the proposed rule ignores the efforts of the Laramie County Commissioners to amend the county use plan and develop a Habitat Conservation Plan which would include *Gaura neomexicana* ssp. *coloradensis*.

*Our Response:* We actively support ecosystem-level conservation efforts and encourage multi-species planning efforts to avoid or reduce the need for future listing actions and facilitate recovery of listed species within designated planning areas. Our 1994 policy regarding the ecosystem approach to the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34273), directs us to make listing decisions for groups of species where possible and implement recovery plans for multiple listed and candidate species. However, we also are required to determine whether a species is endangered or threatened within specific time frames and based on the five factors listed under section 4(a)(1) of the Act. Based on these factors, the decision to propose listing this subspecies was made in 1998. Once a listing is proposed, we have a responsibility to either finalize the listing or withdraw the proposal. After reviewing the available data and the comments received, we determined that finalizing the listing proposal was the appropriate action to take.

Although the Laramie County Habitat Conservation Plan may address the majority of *Gaura neomexicana* ssp. *coloradensis* populations, the effort is still in the early planning process with no certainty of its completion, approval, or implementation. Therefore, we are not able to consider the effectiveness of this Habitat Conservation Plan in reducing or eliminating the threats to this subspecies in the future as part of our listing decision. We must evaluate the threats to *G. n. ssp. coloradensis* based upon existing land-use and regulatory mechanisms, which have not always proven adequate in the past to conserve the subspecies effectively.

*Issue 2:* One commenter stated the proposed rule did not provide compelling reasons for not designating critical habitat.

*Our Response:* After further review of the available data, we found that designating critical habitat is prudent for this subspecies, but we are deferring the designation to allow ourselves to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while establishing protections needed for the conservation of *Gaura neomexicana* ssp. *coloradensis* without further delay.

*Issue 3:* Two commenters stated *Gaura neomexicana* ssp. *coloradensis* should be listed as endangered and not threatened.

*Our Response:* As mentioned above, extensive surveys conducted during 1998 showed populations of *Gaura neomexicana* ssp. *coloradensis* still occurring at the 14 surveyed sites, with 10 of these populations either stable or increasing over the long term. The entire population of this taxon is estimated to contain between 47,000 and 50,000 reproductive plants. Although the majority of populations occur on private land, two populations, which are considered stable, occur on F.E. Warren Air Force Base, and are protected through the Research Natural Area designation and through the current Memorandum of Agreement. Additionally, a seed bank has been established at the Nebraska State Arboretum, and experimental populations have been established at the University of Colorado and the University of Wyoming. As a result, *G. n. ssp. coloradensis* does not meet the definition of an endangered species under the Act, because it is not in imminent danger of extinction in the foreseeable future (see "Summary of Factors Affecting the Species" below). Therefore, listing as threatened is appropriate.

*Issue 4:* Three commenters discussed the value of private land in plant conservation, saying that the plant's presence on private land is an indication that those lands are being managed consistently with the conservation of the subspecies. The commenters expressed concern over the hardship landowners may have to endure as a result of the listing, and one thought conservation efforts should be voluntary without fear of fines.

*Our Response:* We believe private lands will be of great importance in the conservation of *Gaura neomexicana* ssp. *coloradensis*. Most riparian habitat in the geographic range of the plant is in private ownership, so it is reasonable to

expect to find most suitable habitat and most populations of the plant on private lands. We acknowledge that healthy populations of *G. n. ssp. coloradensis* with stable or increasing long-term trends probably reflect land management practices that are compatible with the needs of the plant. We encourage the continuation of such practices. Additionally, the prohibitions outlined in section 9 of the Act are much less restrictive for threatened plants on private lands than for animals (see "Available Conservation Measures" below). Few actions are actually restricted and, therefore, there is little likelihood of landowners suffering hardships because of the presence of a listed plant on their property.

*Issue 5:* Three commenters stated that many agricultural practices benefit *Gaura neomexicana* ssp. *coloradensis*.

*Our Response:* As described above, we recognize that certain agricultural practices and disturbances, particularly those that reduce competition from late-seral stage plants while allowing *Gaura neomexicana* ssp. *coloradensis* to set seed, are beneficial to the plant. However, some agricultural practices may be harmful to the plant's survival. For example, although the plant often does well in grazed areas, certain grazing regimes and stocking levels result in poor conditions for the plant. Mowing of hay may reduce competing vegetation, but if done at the wrong time or too frequently could prevent *G. n. ssp. coloradensis* plants from setting seed. Development of water supply and irrigation systems may result in creation of suitable habitat in some areas, while adversely affecting existing suitable habitat through direct habitat loss and changes in hydrology. Further coordination between the Service and the agriculture industry will improve our understanding of how agriculture affects the plant and its habitat.

*Issue 6:* Five commenters discussed noxious weed control. Two commenters pointed out that limited or timely spraying of noxious weeds may help *Gaura neomexicana* ssp. *coloradensis* by eliminating plants that aggressively compete for resources, while late haying may allow noxious weeds to flourish. Other commenters wanted the Service to identify alternatives to herbicides to control noxious weeds.

*Our Response:* We recognize the need to control noxious weeds and acknowledge that competition from these subspecies may have serious negative implications for *Gaura neomexicana* ssp. *coloradensis*. However, *G. n. ssp. coloradensis* is highly susceptible to commonly-used herbicides when they are applied non-

selectively. Alternative means of herbicide application and the use of biological control agents should continue to be investigated. Further studies at F.E. Warren Air Force Base may help identify the best methods for noxious weed control in *G. n. ssp. coloradensis* habitat.

**Issue 7:** One commenter wanted the Service to disclose what percentage of suitable habitat within the historical habitat has been surveyed and either quantify the level of habitat impacts or quantify the remaining habitat available for recovery.

**Our Response:** *Gaura neomexicana* ssp. *coloradensis* has a restricted geographic range and high habitat specificity (Fertig 1998b), making habitat identification straightforward. The extensive effort associated with 1984–1986 surveys is outlined by Marriott (1987), who indicated that the majority of suitable habitat had been surveyed for the presence of this plant. However, no effort has been made to precisely quantify the percentage of suitable habitat that has been surveyed or the remaining habitat available for recovery. As access to private lands is occasionally restricted and funding for surveys is minimal, our ability to identify and survey all suitable habitat or monitor habitat for impact is limited. Moreover, disturbance regimes and plant succession continually change habitat characteristics, making quantification of habitat available for recovery of limited value. Therefore, we have based our listing determination on the best available information gained from known populations and accessible suitable habitat.

**Issue 8:** One commenter indicated few *Gaura neomexicana* ssp. *coloradensis* plants occur in Nebraska, although many occur elsewhere within the plant's range. We interpreted this comment to indicate the commenter believed the plant should not be listed in Nebraska.

**Our Response:** While it is true that few *Gaura neomexicana* ssp. *coloradensis* plants occur in Nebraska, the Act does not allow for the listing of distinct populations of plants. Therefore, any listing action would cover the entire range of the subspecies. Additionally, the Nebraska plants are facing the same threats occurring elsewhere in the range. The loss of these plants would negatively affect conservation of the subspecies.

**Issue 9:** One commenter expressed concern that listing *Gaura neomexicana* ssp. *coloradensis* would affect their ability to sell their land. We interpret this to be an economic concern.

**Our Response:** Under 16 U.S.C., paragraph 1533(b)(1)(A), 50 CFR 424.11(b), and section 4(b)(1)(A) of the Act, listing decisions are made solely on the basis of the best available scientific and commercial data. Economic impacts cannot be considered when determining whether to list a species under the Act. It also should be noted that plants listed under the Act receive only minimal protection on private lands.

**Issue 10:** Two commenters referenced more recent data available since the proposed rule was published. Both commenters cited higher population numbers than those used in the proposed rule (especially when considering vegetative rosettes), as well as new information regarding long-term trends.

**Our Response:** We have used the most current information available in preparation of this rule, including those documents and studies referenced by the commenters. This rule reflects new population estimates and trends in the "Background" section. Additionally, the Service has considered the apparently large number of vegetative rosettes. However, the survival rate of the vegetative rosettes is generally low and appears to be dependent on many factors, including soil moisture, with many small and medium rosettes produced in wet years and few during dryer years. The large numbers of vegetative rosettes recently documented may merely reflect the wet springs experienced recently, rather than a meaningful increase in population sizes. It appears few vegetative rosettes survive to reach the size necessary for flowering and fruiting. For this reason, as well as the difficulty in identifying small rosettes, flowering plants have always been counted to estimate population size and trends. Limited data are available to establish any trend in number of vegetative rosettes over the years or a strong correlation between the number of vegetative rosettes and flowering plant population size. Therefore, we believe the best indicator of population size for this plant is the number of flowering plants.

**Issue 11:** One commenter indicated residential and urban development cannot be considered a threat to the plant in Laramie County, Wyoming, because of existing land use plans.

**Our Response:** The Laramie County Comprehensive Land Use Plan contains a variety of policies that may protect habitat in unincorporated portions of the county, if the County Commissioners choose. However, none of the policies offer specific protection for the plant or its habitat. Rather, the policies require: (1) Developers include

a discussion of wildlife resources in the area in an Environmental Impact Report, (2) new subdivisions demonstrate no threats to nearby irrigators, (3) open space and recreational uses be considered the preferred uses in floodplains areas, and (4) existing natural and manmade features which affect land use be considered and evaluated prior to the approval of new subdivisions and developments. Although this guidance certainly allows the County Commissioners to be able to make decisions that would assist in conservation of various resources, the Laramie County Comprehensive Land Use Plan does not mandate conservation of resources in general or *Gaura neomexicana* ssp. *coloradensis* in particular. In fact, by allowing recreational activities such as hiking trails, community gardens, and riding arenas in the floodplain, the Laramie County Comprehensive Land Use Plan could allow adverse impacts to populations of *G. n. ssp. coloradensis*.

**Issue 12:** One commenter opposed the listing of *Gaura neomexicana* ssp. *coloradensis*, stating that the Federal government lacks the authority under the Commerce Clause of the Constitution to regulate this subspecies.

**Our Response:** The Federal government has the authority under the Commerce Clause of the United States Constitution to protect this subspecies, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), cert. denied, 1185 S.Ct. 2340 (1998), making it clear in its application of the test used in the United States Supreme Court case, *United States v. Lopez*, 514 U.S. 549 (1995), that regulation of endangered species limited to one State under the Act is within Congress' Commerce Clause power. That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). Judge Wald held that application of the Act's prohibition against taking of endangered species was a proper exercise of Commerce Clause power to regulate: (1) Use of channels of interstate commerce, and (2) activities substantially affecting interstate commerce, because applying the Act in that case prevented destructive interstate competition and loss of biodiversity. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and regulates commercial

development that is part of interstate commerce.

The Federal government also has the authority under the Property Clause of the Constitution to protect *Gaura neomexicana* ssp. *coloradensis* which occurs on the F.E. Warren Air Force Base. If this subspecies were to become extinct or extirpated, the diversity of plant life on the Air Force Base would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See e.g., *Kleppe v. New Mexico*, 429 U.S. 873 (1976); *United States v. Alford*, 274 U.S. 264 (1927); *Camfield v. United States*, 167 U.S. 518 (1897); *United States v. Lindsey*, 595 F.2d 5 (9th Cir. 1979).

**Issue 13:** Two commenters expressed concern regarding the delays in publishing a final listing decision and questioned the need to reopen the comment period. Both commenters believe the Service reopened the comment period to appease political interests. Additionally, one of the commenters indicated there was no new information that would warrant reconsideration of the proposal.

**Our Response:** We acknowledge our tardiness in publishing the final rule. Because of an oversight during the initial comment period for the proposed rule, the legal notices required by the Act (section 4(b)(5)(D)) were not published in any local newspapers. In order to fully comply with the Act, we reopened the comment period and published legal notices in the "Fort Collins Coloradoan," the "Wyoming Tribune Eagle," and "Western Nebraska Observer." Six comment letters were received during the reopened comment period, two referencing new information regarding population sizes and trends. While our review of the new information did not ultimately change the proposed action, the Service believed the new information was significant enough to warrant consideration.

#### Peer Review

In accordance with interagency policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of this review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including

input from appropriate experts and specialists. Two scientists responded to our request for peer review of this listing action and provided information which generally supported the biological and ecological data presented in the proposed rule.

One reviewer expressed concern regarding the timeliness of the listing. The reviewer indicated listing alone would result in only limited conservation on private lands, where most of the known populations occur. The reviewer wanted the Service to postpone the listing to allow time for a more significant effort to establish management agreements with willing land owners.

**Our Response:** As stated in response to Issue 1 above, we are required to determine whether a species is endangered or threatened within specific timeframes and based solely on the five factors listed under section 4(a)(1) of the Act. Therefore, the decision was made to list this subspecies at this time.

A second reviewer also felt voluntary conservation measures are more likely to protect this subspecies and its habitat than listing under the Act. The reviewer indicated that threats are clearly present, but many (such as herbicide use) can be mitigated. Additionally, the reviewer believed current management of privately-owned agricultural lands is largely compatible with the needs of the plant or could be made compatible through education. This reviewer believed listing of *Gaura neomexicana* ssp. *coloradensis* as threatened could undermine its conservation if landowners react negatively to its presence, and would do little to improve its management on Federal lands, such as F.E. Warren Air Force Base. The reviewer indicated that the section 9 protections discussed in the proposed rule were reasonable and consistent with the management needs of the subspecies.

**Our Response:** We have to make our listing decision based on conservation measures that are currently in place. Even if formal conservation agreements were in place, those agreements would need to be evaluated based upon the certainty of implementation and effectiveness. Many of the current threats could be minimized and mitigated through implementation of formal conservation agreements, including education programs. However, without those agreements there is not a high level of certainty that any conservation measures will be implemented. The potential for landowners to react negatively to the listing is not a factor that we can

consider in making a listing decision. However, the Service will conduct outreach in association with this listing decision to try to minimize negative reactions by landowners and others. Additionally, listing the plant will give the Service additional oversight of potential adverse impacts resulting from Federal projects through section 7 consultation. This should enhance conservation of the species.

#### Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gaura neomexicana* ssp. *coloradensis* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Gaura neomexicana* ssp. *coloradensis* is restricted to approximately 6,880 ha (17,000 ac) running from Colorado Springs, Colorado, north to Cheyenne, Wyoming, and spreading into a small portion of southwest corner of Nebraska. Of the currently known populations of *G. n.* ssp. *coloradensis*, the vast majority occur on private lands managed primarily for agriculture. Only two populations occur on Federal land, both at F.E. Warren Air Force Base. Small populations are found in special management areas at Chambers Preserve, Colorado, and Oliver Reservoir State Recreation Area, Nebraska. At least three other populations in Wyoming are found partly or fully on state school trust lands managed mostly for agricultural uses. The Meadow Springs Ranch population in northern Colorado is owned by the City of Fort Collins and managed for municipal sewage treatment.

Haying and mowing at certain times of the year, water development, land conversion for cultivation, competition from exotic plants, non-selective use of herbicides, and loss of habitat to urban growth are the main threats to the plant on these lands (Marriott 1987; Fertig 1994). On some sites, including F.E. Warren Air Force Base, habitat degradation resulting from plant succession and noxious weed competition is the main threat to the long-term survival of populations. High recreational use by campers, motorists, and fishermen is a threat to populations on State park lands in Nebraska.



Conversion of moist, native grasslands to commercial croplands has been widespread throughout southeastern Wyoming and northeastern Colorado (Compton and Hugie 1993). Since much of the agricultural lands are irrigated hay fields, mowing of *Gaura neomexicana* ssp. *coloradensis* habitat for hay production has been suggested as a potential threat if conducted at an inappropriate time of year (Jennings *et al.* 1997). Although this threat can be significant if cutting occurs before the plant's fruits have ripened, if cutting is delayed until late in the growing season when a hard fruit wall is developed, the seeds are not damaged by cutting and may actually be dispersed in the process. Likewise, early season mowing (before the flower stalks have bolted) may provide some advantages to the plant by reducing the cover of competing vegetation (Fertig 1994).

Construction of stock ponds and reservoirs has inundated some *Gaura neomexicana* ssp. *coloradensis* habitat and made it unsuitable for the subspecies. The development of irrigation canals to move water to croplands may remove moisture from occupied or potentially suitable habitat leaving it in a drier, unsuitable condition. Additionally, the management of water resources for domestic and commercial uses, coupled with encroaching agricultural land use, has had a tendency to channelize and isolate water resources and fragment, realign, and reduce riparian and moist lowland habitat that could otherwise serve as potential *G. n. ssp. coloradensis* habitat (Compton and Hugie 1993).

Residential and urban development around the cities of Cheyenne and Fort Collins has converted areas of formerly suitable *Gaura neomexicana* ssp. *coloradensis* habitat. The high rate of development occurring from Colorado Springs, Colorado, to Cheyenne, Wyoming, has been cited as a continuing threat to remaining populations of the Preble's meadow jumping mouse, a threatened species that also occurs in riparian habitats and whose historic range overlaps much of that of *G. n. ssp. coloradensis* (62 FR 14093).

In nonagricultural, undeveloped areas, a significant threat to *Gaura neomexicana* ssp. *coloradensis* populations is habitat degradation resulting from succession of the plant community. Without periodic disturbance events, the semi-open habitats preferred by this subspecies can become choked by tall and dense growth of willows, grasses, and exotic weeds (Fertig 1994). Natural disturbances, such as flooding, fire, and

native ungulate grazing, were sufficient in the past to create favorable habitat conditions for the plant. However, the natural flooding regime within the subspecies' floodplain habitat has been altered by construction of flood control structures and by irrigation and channelization practices. In the absence of such natural disturbances today, managed disturbance may be necessary to maintain and create areas of suitable habitat (Fertig 1994, 1996). However, many Federal programs, such as those administered by the USDA Natural Resources Conservation Service, focus on enhancing or protecting riparian areas by removing the types of disturbance the plant needs, increasing vegetative cover, and pushing the habitat into later successional stages.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Given the limited range and concentration of the subpopulations, overcollection could be a problem. However, currently, there does not appear to be any commercial demand for the subspecies, nor is it anticipated that there would be any substantial threat of overcollection due to scientific or educational demands.

C. *Disease or predation.* There are no known diseases affecting *Gaura neomexicana* ssp. *coloradensis* populations, although the subspecies is occasionally affected by insect galls. *G. n. ssp. coloradensis* is highly palatable to a variety of insect and mammalian herbivores (e.g., cattle, horses, and pronghorn (*Antilocapra americana*)), but appears to compensate for herbivory by increasing branch and fruit production. Livestock grazing can be a threat at some sites if grazing pressures are high due to animals are not being rotated among pastures or concentrated use during the summer flowering period. Additionally, plants are occasionally uprooted or trampled by livestock and wildlife grazing in the vicinity. In at least one location where a population of *G. n. ssp. coloradensis* was divided by a fence, the heavily-grazed side of the fence had few or no *G. n. ssp. coloradensis* plants (J. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). The primary author of this rule also has observed a site adversely affected by higher-intensity grazing. However, in a similar situation, the more heavily-grazed side of the fence had numerous rosettes, but the side with no grazing had dense willow cover and no *G. n. ssp. coloradensis* (Walt Fertig, The Nature Conservancy, *in litt.* 1998). In addition to the intensity of grazing, the timing of grazing is key to *G. n. ssp. coloradensis* survival. Observations have shown that the plant

can persist and thrive in habitats that are winter-grazed or managed on a short-term rotation cycle (Jennings *et al.* 1997). Light to medium grazing can provide additional benefits by reducing the competing vegetative cover and allowing *G. n. ssp. coloradensis* seedlings to become established.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws or regulations specifically protect *Gaura neomexicana* ssp. *coloradensis* or its habitat. The plant is listed as Sensitive by the U.S. Forest Service, although no populations are currently known from Forest Service lands (D. Hazlett, Plants and People Consulting, pers. comm, 1994). Fertig (1998b) considers the inadequacy of existing regulatory mechanisms to be the main impediment to long-term conservation of *G. n. ssp. coloradensis*. Although the Preble's meadow jumping mouse, a threatened species, inhabits riparian areas within the range of *G. n. ssp. coloradensis*, these two species prefer different stages of vegetational succession. Therefore, measures to protect habitat for the mouse may not protect *G. n. ssp. coloradensis*.

E. *Other natural or manmade factors affecting its continued existence.* The most serious threat on agricultural lands is non-selective use of broadleaf herbicides for the control of *Cirsium arvense* (Canada thistle), *Euphorbia esula* (leafy spurge), and other exotic plants (Marriott 1987). The noxious weed problem in Laramie County, Wyoming, is particularly evident on F.E. Warren Air Force Base. Although competition from these subspecies may have serious negative implications for populations of *Gaura neomexicana* ssp. *coloradensis*, the plant appears to be highly susceptible to commonly used herbicides when they are applied non-selectively. In 1983, nearly one-half of the mapped populations on F.E. Warren Air Force Base were inadvertently destroyed when sprayed with Tordon, a persistent herbicide. Additionally, herbicide use along road crossings in and adjacent to *G. n. ssp. coloradensis* populations also has been noted (J. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). Biological control agents have been used at F.E. Warren Air Force Base, but have not yet been fully effective in controlling Canada thistle or leafy spurge. Introduced gall-forming flies have slowly become established on the Base and have reduced the vigor, height, and reproductive ability of small patches of Canada thistle (Fertig 1997). The first evidence of successful establishment of flea beetles, a biocontrol agent for leafy spurge, was



observed on the Base in 1997 (Fertig 1998a).

In order for a population to sustain itself, there must be enough reproducing individuals and sufficient habitat to ensure survival of the population. It is not known if the scattered populations of *Gaura neomexicana* ssp. *coloradensis* contain sufficient individuals and diversity to ensure their continued existence over the long term.

The most recent survey information for the known populations of *Gaura neomexicana* ssp. *coloradensis* shows that only 5 of the 14 surveyed populations are large (i.e., with at least 3,000 or more flowering individuals). Only one of these occurs on Federal lands. Seven of the surveyed populations (one of them occurring on Federal lands) are moderately sized, containing between 500 and 2,500 flowering individuals each. The remaining 2 surveyed populations are smaller, with less than 200 reproductive individuals each. These small populations are threatened by a possible reduction in vigor and fecundity (often evidenced by reduced seed set), as random genetic changes occur and genetic variability is lost as a result of inbreeding which is inevitable in small populations (Ehrlich 1981; Ledig 1986). Because of the small, isolated nature of the populations and the few individuals present in many of them, *G. n. ssp. coloradensis* also is more susceptible to random events, such as fires, insect or disease outbreaks, or other events that can easily cause the extirpation of a small population.

Although the plant evolved with and even depended upon the disturbance associated with these types of events, they may now pose a threat to *Gaura neomexicana* ssp. *coloradensis*. Individual plants may not survive such events, and because of low numbers and the now highly restricted range of the subspecies, events such as fires and floods pose a threat. A flood in 1983 along Crow Creek on the F.E. Warren Air Force Base impacted several populations and experimental seed plots established in 1981 (U.S. Fish and Wildlife Service, *in litt.* 1984). However, these populations rebounded and have been censused annually since 1986 (Walt Fertig, The Nature Conservancy, *in litt.* 1998).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Gaura neomexicana* ssp. *coloradensis* in determining to issue this final rule. While not in immediate danger of extinction, *G. n. ssp. coloradensis* is likely to become an endangered species

in the foreseeable future if the present threats and declines continue. Although some conservation efforts are being conducted on Federal and private lands, these efforts are currently not sufficient to provide adequate protection for the subspecies. Therefore, Federal listing under authority of the Act is the only mechanism we can presently identify that will help ensure protection for *G. n. ssp. coloradensis* throughout its limited range.

#### Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Gaura neomexicana* ssp. *coloradensis* because of a concern that publication of precise maps and

descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this subspecies to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as threatened.

In the last few years, a series of court decisions have overturned Service determinations that designation of critical habitat for a variety of species would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Gaura neomexicana* ssp. *coloradensis* would be prudent.

As with other species we list, we have the concern that unrestricted collection, vandalism, or other disturbances could be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Gaura neomexicana* ssp. *coloradensis* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(I)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this subspecies of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a subspecies, if any benefits would result from a critical habitat designation, then a prudent finding is warranted. In the case of this subspecies, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this subspecies would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat also would be likely to result in jeopardy to the subspecies, in certain instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include some actions in unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating

critical habitat may provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for *Gaura neomexicana* ssp. *coloradensis*.

As explained in detail in the Final Listing Priority Guidance for Fiscal Year 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We focus our efforts on those listing actions that provide the most conservation benefit. Deferral of the critical habitat designation for this subspecies will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, without delaying the final listing decision for *Gaura neomexicana* ssp. *coloradensis*. We will develop a proposal to designate critical habitat for *G. n. ssp. coloradensis* as soon as feasible, considering our workload priorities and available funding. Unfortunately, for the immediate future, most of Region 6's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

#### Available Conservation Measures

The Nebraska State Arboretum currently maintains a seed bank of *Gaura neomexicana* ssp. *coloradensis* collected from sites along Lodgepole Creek in Nebraska (J. Locklear, Nebraska State Arboretum, pers. comm. April 15, 1997). Additional seed has been collected by the Natural Resources Conservation Service for deposit at the Bridger Plant Materials Center in Montana. Seed from other populations throughout the range of this subspecies is needed to ensure adequate genetic representation in cultivated stocks and seed banks. Additional testing is needed to determine the viability of seed after long periods of storage.

Habitat along Crow and Diamond Creeks on F.E. Warren Air Force Base has been designated as the Colorado Butterfly Plant Research Natural Area dedicated to the protection of the largest known population of *Gaura neomexicana* ssp. *coloradensis*, and a management plan has been developed (Marriott and Jones 1988). Two relatively large populations of *G. n. ssp. coloradensis* occur within the Colorado Butterfly Plant Research Natural Area. Under various memoranda of understanding and cooperative agreements with the Service and The Nature Conservancy, the Air Force has been conducting conservation activities for this subspecies since 1982. However, the current Memorandum of Agreement

between the Service and the Air Force contains no implementation schedule, is subject to the availability of appropriated and non-appropriated funds and personnel, and can be terminated at any time (with 60 days notice). The Base is currently implementing a weed-control program with special restrictions on the spraying of pesticides in *G. n. ssp. coloradensis* habitat. Continued implementation of conservation actions on the Base will enhance the overall conservation of the subspecies.

In 1983 a population of *Gaura neomexicana* ssp. *coloradensis* was introduced on the Chambers Preserve near Boulder, Colorado. Although the reintroduction was initially successful, whether the population persists today is unknown. Several private landowners with natural populations of the plant have expressed interest in pursuing conservation projects; none are currently in place. Protection for these natural populations should be encouraged.

Additionally, as mentioned above, little is known of the genetic variability within or between populations. Genetic research to determine the degree of genetic variability within and between populations of the plant would enable the Service to focus conservation measures on maintaining the existing genetic diversity of *Gaura neomexicana* ssp. *coloradensis*, thus enhancing the subspecies' chances of long-term survival. The Air Force is currently funding a genetics study focused on populations of *G. n. ssp. coloradensis* at F.E. Warren Air Force Base.

Conservation measures provided to subspecies listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the States to conduct recovery activities. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being

designated. Regulations implementing this interagency cooperation of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the listed species or destroy or adversely modify its critical habitat, if designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, under to section 7(a)(2) of the Act.

Federal agency actions that may require consultation as described in the preceding paragraph include altering vegetation, particularly through the use of herbicides; implementing livestock grazing management that alters vegetation during the flowering season of *Gaura neomexicana* ssp. *coloradensis*; construction of roads or hiking/biking trails along or through riparian areas; channelization and other alteration of perennial streams and their hydrological regimes for flood control and other water management purposes; permanent and temporary damming of streams to create water storage reservoirs or to alter the stream's course; construction of residential, commercial, and industrial developments, including roads, bridges, public utilities and telephone lines, pipelines, and other structures in *G. n. ssp. coloradensis* habitat; and sand and gravel and other types of mining activities within or upstream of *G. n. coloradensis* habitat. In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

Listing of this plant as threatened would provide for the development of a recovery plan, which would identify both State and Federal efforts for conservation of the plant and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to provide for the conservation and or recovery of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected States for management actions promoting the protection and recovery of this subspecies.

The Act and our implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it

illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this subspecies in the future if such regulations were to be issued. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the subspecies. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the subspecies is not in cultivation or common in the wild.

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum

extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of State law or regulation, or in the course of violation of State criminal trespass law. Otherwise, such activities would not constitute a violation of the Act on non-Federal lands.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Wyoming Field Supervisor (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486.

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)**

This rule does not contain any information collection requirements that require Office of Management and Budget approval under the Paperwork Reduction Act.

**National Environmental Policy Act**

The Service has determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of

1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Wyoming Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under "FLOWERING PLANTS," to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*		*		*
<i>Gaura neomexicana</i> ssp. <i>coloradensis</i> .	Colorado butterfly plant .....	U.S.A. (CO, NE, WY).	Onagraceae .....	T	704	NA	NA
*	*	*	*		*		*

# Proposed Rules

Federal Register

Vol. 65, No. 202

Wednesday, October 18, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

#### Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sugarcane Crop Insurance Provisions. The intended effect of this proposed action is to provide policy changes to better meet the needs of the insureds and to restrict the effect of the current Sugarcane Crop Insurance Regulations to the 2001 and prior crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business December 18, 2000 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO 64133. Comments may also be sent via the Internet to DIRECTORPDD@RM.FCIC.USDA.GOV. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Arden Routh, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive

Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

##### Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563-0053 through April 30, 2001.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to access the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### Executive Order 13132

The provisions contained in this rule do not have any substantial direct effect on states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Therefore, no consultation with states is required.

##### Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, every producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the producer is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter these requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no

Regulatory Flexibility Analysis was prepared.

##### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

##### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

##### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

##### Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.116 Sugarcane Crop Insurance Provisions effective for the 2002 and succeeding crop years. The proposed changes to provisions for insuring sugarcane are as follows:

1. Change the word "paragraph" to "section" throughout these provisions to be consistent with other crop provisions and make other minor editorial changes.

2. Section 1—Remove the definition of "local market price" because there is no local market price for raw sugar, and revise the definition of "sugarcane" for clarification.

3. Section 5—Add provision that makes uninsurable any sugarcane damaged the previous crop year to the extent the sugarcane is unable to

produce the production guarantee. Add a provision that the sugarcane is not insurable if it exceeds the age limitations (by variety if applicable) at which sugarcane may be insured as specified in the Special Provisions. This change eliminates the need for inadequate stand appraisals unless the insured is seeking insurance by written agreement.

4. Section 7(a)—Removed provisions for plant cane that allow coverage at a later date by an agreement in writing, as this is an uncommon practice. Removed language that allows coverage to attach on the later of April 15 or 30 days following the harvest of stubble cane, since in practice coverage will attach only on the specified date. Clarify when insurance attaches for Louisiana and all other states. For stubble cane damaged the previous crop year, the calendar date when insurance attaches has been changed from April 15 to April 30 in Louisiana. Currently, acreage that does not have an adequate stand on April 15 is not insurable; however, this same acreage may have an adequate stand by April 30.

5. Section 9(a)—Add provisions that if the insured believes that the sugarcane will produce less than the approved yield, the insured must request that an appraisal be performed to determine the sugar potential. If an appraisal is not made, the production to count for such acreage will be the approved yield. Also, this section clarifies the requirement that if notice is not given prior to cutting for seed, the acreage will be considered as put to another use without consent and the approved yield will be assessed for such acreage.

6. Add an example of a claim for indemnity for clarity.

7. Section 10(c)(1)(iv)—Remove provisions that explained the process for making an inadequate stand appraisal. It has been determined that inadequate stand appraisals are not accurate. Current sections 10(c)(1)(v) and (vi) have been redesignated to 10(c)(1)(iv) and (v).

8. Section 10(d)—Delete the section because there is no local market price for raw sugar. The extent of any freeze damage to sugarcane is reflected in the pounds of raw sugar extracted from the damaged sugarcane. A producer with freeze damaged sugarcane is paid the same price per pound for raw sugar as a producer whose sugarcane is not damaged.

#### List of Subjects in 7 CFR Part 457

Crop insurance.

Accordingly, as set forth in the preamble, the Federal Crop Insurance

Corporation proposes to amend 7 CFR part 457 as follows:

#### PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.116 as follows:

a. Revise the introductory text.

b. In section 1 of the crop provisions, delete the definition for “local market price” and revise the definition for “sugarcane.”

c. Revise sections 3, 5, 6, 7, the introductory language to 9(a), 9(a)(2), and 10(b)(4) of the crop provisions.

d. Remove the parenthetical phrase “(§ 457.8)” wherever it occurs in sections 2, 8, and 9(b) of the crop provisions. In addition, remove the parenthetical phrases “(Insurance Guarantees, Coverage Levels, and Price for Determining Indemnities)” in section 2(a); “(Causes of Loss)” in section 8 introductory text; and “(Duties in the Event of Damage or Loss)” in section 9(b).

e. Remove section 10(c)(1)(iv) of the crop provisions.

f. Redesignate section 10(c)(1)(v) and (c)(1)(vi) as section 10(c)(1)(iv) and (c)(1)(v), respectively, of the crop provisions and in newly redesignated 10(c)(1)(iv), remove the word “paragraph” and add “section”, in its place.

The revised text reads as follows:

#### § 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2002 and succeeding crop years are as follows:

\* \* \* \* \*

1. Definitions.

\* \* \* \* \*

*Sugarcane*—means plant cane and stubble cane.

\* \* \* \* \*

3. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is June 30 preceding the cancellation date.

\* \* \* \* \*

5. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the sugarcane in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is grown for processing for sugar or for seed; and

(3) That is not interplanted with another crop, unless allowed by a written agreement.

(b) In addition to the crop listed as not insured in section 8(b) of the Basic Provisions, we will not insure any sugarcane:

(1) That was damaged the previous crop year to the extent the sugarcane is unable to produce the production guarantee; or

(2) That exceeds the age limitations (by variety, if applicable) contained in the Special Provisions, unless we agree in writing to insure such acreage.

6. Insurable Acreage.

Section 9(a)(3) of the Basic Provisions is not applicable to the Sugarcane Crop Provisions.

7. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches:

(1) At the time of planting for plant cane;

(2) On the first day following harvest of the previous crop for stubble cane except as contained in sections 7(a)(3) and (4);

(3) On April 15 following harvest of the previous crop for stubble cane damaged during the previous crop year in all states (except Louisiana); and

(4) On April 30 following harvest of the previous crop for stubble cane damaged during the previous crop year in Louisiana.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is:

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

\* \* \* \* \*

9. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed.

(a) In addition to your duties under section 14 of the Basic Provisions, in the event of damage or loss:

\* \* \* \* \*

(2) You must give us notice at least 15 days before you begin cutting any sugarcane for seed. Your notice must include the unit number and the number of acres you intend to harvest as seed. Failure to give us timely notice will cause the acreage cut for seed to be considered as put to another use without consent. The production to count for such acreage will be your approved yield.

(3) If you believe that your sugarcane will produce less than your approved yield, you must request an appraisal of the sugarcane to determine the sugar potential. If you do not request an appraisal, the production to count for such acreage will be your approved yield.

\* \* \* \* \*

10. Settlement of Claim.

\* \* \* \* \*

(b) \* \* \*

(4) Multiplying this result by your share.

Example 1:

Assume you have a 100 percent share in a unit of 100 acres of sugarcane, with a guarantee of 4,000 pounds of raw sugar per acre and a price election of \$0.12 per pound. You are only able to harvest 200,000 pounds because the unit was damaged by an insurable cause of loss. Your indemnity would be calculated as follows:

(1) 100 acres  $\times$  4,000 pounds = 400,000 pound guarantee;

(2) 400,000 pound guarantee – 200,000 pounds harvested production = 200,000 pound production loss;

(3) 200,000 pound production loss  $\times$  \$0.12 price election = \$24,000 value of production loss; and

(4) \$24,000 value of production loss  $\times$  100 percent share = \$24,000 indemnity payment.

Example 2:

Assume you have a 100 percent share in a unit of 100 acres of sugarcane. Your approved yield is 6,000 pounds of raw sugar per acre. You have selected the 65 percent coverage level, which multiplied by your approved yield equals a guarantee of 3,900 pounds of raw sugar per acre, and a price election of \$0.12 per pound. You cut 20 acres of this unit for seed without giving notice that you were cutting this acreage for seed. You are only able to harvest 200,000 pounds from the remaining 80 acres. Your indemnity would be calculated as follows:

(1) 100 acres  $\times$  3,900 pounds = 390,000 pound guarantee;

(2) 390,000 pound guarantee – 200,000 pounds harvested production – 120,000 pound production guarantee for putting acreage to another use without consent (20 acres  $\times$  6,000 approved yield per acre) = 70,000 production loss;

(3) 70,000 pound production loss  $\times$  \$0.12 price election = \$8,400 value of production loss; and

(4) \$8,400 value of production loss  $\times$  100 percent share = \$8,400 indemnity payment.

\* \* \* \* \*

Signed in Washington, DC, on October 3, 2000.

**Kenneth D. Ackerman,**  
Manager, Federal Crop Insurance Corporation.

[FR Doc. 00-25987 Filed 10-17-00; 8:45 am]

BILLING CODE 3410-08-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-380-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-300, -400, and -500 series airplanes. This proposal would require repetitive inspections to detect cracking of certain areas of the forward pressure bulkhead, and repair, if necessary. This proposal also would require certain preventive modifications, which, when accomplished, would terminate the repetitive inspections for the affected areas. This action is necessary to prevent fatigue cracking on critical areas of the forward pressure bulkhead, which could result in rapid decompression of the airplane fuselage. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 4, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-380-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99-NM-380-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### FOR FURTHER INFORMATION CONTACT:

Nenita K. Odesa, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2557; fax (425) 227-1181.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-380-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-380-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

## Discussion

The FAA has received reports indicating that operators have found numerous fatigue cracks on the body station 178 forward pressure bulkhead on certain Boeing Model 737 series airplanes. The longest fatigue crack was approximately 25 inches in length. The fatigue cracks were found at three critical structural areas of the bulkhead, namely, at the side chord areas of the bulkhead, at certain vertical chords of the bulkhead; and on the bulkhead web itself between left and right buttock lines 17.0. Such fatigue cracking, if not corrected, could result in rapid decompression of the airplane fuselage.

## Related Rulemaking

On March 10, 2000, the FAA issued AD 2000-05-29, amendment 39-11639 (65 FR 14834, March 20, 2000), applicable to certain Boeing Model 737-100, -200, -300, -400, and -500 series airplanes, that requires repetitive inspections to detect cracking of various areas of the forward pressure bulkhead, and repair, if necessary. That action also provides for certain optional preventive modifications, which, if accomplished, would terminate the repetitive inspections for the affected areas. That action was prompted by reports indicating that numerous fatigue cracks were found on critical areas of the forward pressure bulkhead. The requirements of that AD are intended to prevent such fatigue cracking, which could result in rapid decompression of the airplane fuselage.

In the preamble to AD 2000-05-29, the FAA specified that the actions required by that AD were considered interim action. The FAA indicated that it may consider further rulemaking action to mandate certain inspections and modifications to address fatigue cracking in the bulkhead of Model 737 series airplanes having line numbers 2738 through 3071, inclusive. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-53A1208, dated May 6, 1999, which describes procedures for repetitive inspections to detect cracking of the vertical and side chord areas on the body station 178 forward pressure bulkhead; and repair, if necessary. The service bulletin lists several types of inspections to be performed on the vertical and side chord areas of the

forward pressure bulkhead. The inspections applicable to these areas consist of detailed visual/borescope inspections, eddy current inspections, and ultrasonic inspections.

The service bulletin also describes procedures for certain preventive modifications, which, if accomplished, would eliminate the need for the repetitive inspections. Specifically, these modifications consist of installing certain angles and straps to strengthen the vertical chord area at waterline 184, and the side chord area at waterline 207. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

## Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that the alert service bulletin refers to certain preventive modifications as optional. However, this proposed AD would make these preventive modifications mandatory, and would require accomplishment prior to the accumulation of 75,000 total flight cycles or within 12,000 flight cycles after the effective date of this AD, whichever occurs later. The proposed grace period of 12,000 flight cycles was developed to correspond with a typical operator's heavy maintenance check schedule in order to minimize disruption to scheduled operations. As with the compliance times proposed for the inspections, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the high number of airplanes that have already been found to be affected by the unsafe condition. These mandatory preventive modifications, when accomplished, would constitute terminating action for the repetitive inspection requirements of this proposed AD.

## Cost Impact

There are approximately 330 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S.

registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$13,800, or \$120 per airplane, per inspection cycle.

It would take approximately 38 work hours per airplane to accomplish the proposed modification of the vertical chords, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$2,789 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$582,935, or \$5,069 per airplane.

It would take approximately 274 work hours per airplane to accomplish the proposed modification of the side chord areas, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$6,629 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$2,652,935, or \$23,069 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory



Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

##### Boeing: Docket 99-NM-380-AD.

*Applicability:* Model 737-300, -400, and -500 series airplanes, certificated in any category; as listed in Boeing Alert Service Bulletin 737-53A1208, dated May 6, 1999.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect fatigue cracking of the forward pressure bulkhead, which could result in rapid decompression of the airplane fuselage, accomplish the following:

##### Initial and Repetitive Inspections

(a) Before the accumulation of 20,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform the applicable inspections of the vertical and side chord areas of the forward pressure bulkhead to detect cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1208, dated May 6, 1999. Thereafter, repeat the inspections at intervals not to exceed 6,000 flight cycles

until the preventive modifications required by paragraph (c) of this AD have been accomplished.

##### Repair

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, before further flight, repair the area in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1208, dated May 6, 1999.

##### Terminating Action

(c) Before the accumulation of 75,000 total flight cycles, or within 12,000 flight cycles after the effective date of this AD, whichever occurs later: Accomplish preventive modifications of the vertical and side chord areas of the forward pressure bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1208, dated May 6, 1999. Accomplishment of these modifications constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

##### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

##### Special Flight Permit

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 12, 2000.

**Donald L. Rigin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00-26711 Filed 10-17-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-CE-63-AD]

RIN 2120-AA64

#### Airworthiness Directives; Raytheon Aircraft Company Beech Models 35-C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Raytheon Aircraft Company (Raytheon) Beech Models 35-C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes that incorporate a certain Teledyne Continental engine configuration. The proposed AD would require you to repetitively replace the existing Aeroquip V-band exhaust clamp. The actions specified by the proposed AD are intended to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. Clamp failure could result in the release of high temperature gases inside the engine compartment with a consequent fire in the engine compartment.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this rule on or before December 11, 2000.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-63-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

You may get the service information referenced in the proposed AD from Tornado Alley Turbo, Inc., 300 Airport Road, Ada, Oklahoma 74820; telephone: toll free 1-800-FLY-GAMI, or (580) 332-3510; facsimile: (580) 332-4577. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter W. Hakala, Aerospace Engineer, FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76193-0190; telephone: (817) 222-5145; facsimile: (817) 222-5785.

**SUPPLEMENTARY INFORMATION:**



## Comments Invited

### *How do I Comment on the Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

### *Are There any Specific Portions of the AD I Should pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.plainlanguage.gov>.

### *How can I be Sure FAA Receives my Comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99-CE-63-AD." We will date stamp and mail the postcard back to you.

## Discussion

### *What Events Have Caused This Proposed AD?*

The FAA has received reports of two instances where an Aeroquip V-band exhaust clamp (Aeroquip part number

(P/N) 00624-4404C375-M) failed on Raytheon Models Beech A36 airplanes. This V-band exhaust clamp is part of the installation configuration of Tornado Alley Turbo, Inc. Supplemental Type Certificate (STC) SA5223NM and STC SE5222NM. The incorporation of these STC's installs a Teledyne Continental engine equipped with a turbonormalizing system on Raytheon Beech Models 35-C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes. The V-band exhaust clamp, P/N 00624-4404C375-M, attaches the exhaust stack to the turbocharger.

### *What are the Consequences if the Condition is not Corrected?*

The exhaust stack detaching from the turbocharger could result in the release of high temperature gases inside the engine compartment with a consequent fire in the engine compartment.

## Relevant Service Information

### *Is There Service Information That Applies to this Subject?*

The STC holder, Tornado Alley Turbo, Inc., has issued Mandatory Service Bulletin Number TAT 98-1, dated November 21, 1998.

### *What are the Provisions of This Service Bulletin?*

The service bulletin includes procedures for inspecting the Aeroquip V-band exhaust clamp (Aeroquip P/N 00624-4404C375-M) for cracks.

Replacement instructions are included in the Turbo-Flite™ 520/550 System Maintenance and Troubleshooting manual.

## The FAA's Determination and an Explanation of the Provisions of the Proposed AD

### *What has FAA Decided?*

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- the unsafe condition referenced in this document exists or could develop on other Raytheon Beech Models 35-C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes of the same type design that incorporate STC SA5223NM and STC SE5222NM;
- the affected V-band exhaust clamp should be replaced at each 400 hours time-in-service (TIS) instead of relying on repetitive inspections to detect problems; and
- AD action should be taken in order to correct this unsafe condition.

### *What Would this Proposed AD Require?*

This proposed AD requires you to repetitively replace the V-band exhaust clamp, Aeroquip P/N 00624-4404C375-M.

### *Could the Affected V-band Clamp be Installed on Other Type Design Airplanes?*

Cessna 185 series airplanes could have the subject clamp installed through the incorporation of Tornado Alley Turbo, Inc. STC SE00214DE and STC SE002215DE. The FAA has determined that the cracks at the weld spots in these V-band clamps are occurring because of the specific configuration of the affected Raytheon airplanes. We have received no reports of service problems with the affected V-band clamps installed on Cessna 185 series airplanes.

## Cost Impact

### *How many airplanes would this proposed AD impact?*

We estimate that the proposed AD would affect 180 airplanes in the U.S. registry.

### *What Would be the Cost Impact of Each Proposed Repetitive Replacement for the Affected Airplanes on the U.S. Register?*

We estimate that it would take approximately 2 workhours per airplane to accomplish each proposed repetitive replacement, at an average labor rate of \$60 an hour. A replacement clamp costs \$50. Based on the figures presented above, the total cost impact of each proposed repetitive replacement on U.S. operators is estimated to be \$30,600, or \$170 per airplane.

## Regulatory Impact

### *Would this Proposed AD Impact Various Entities?*

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

### *Would this Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

#### PART 39—AIRWORTHINESS DIRECTIVES

##### § 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Raytheon Aircraft Company** (The Beech Aircraft Corporation previously was the holder of Type Certificate 3A15): Docket No. 99–CE–63–AD.

(a) *What airplanes are affected by this AD?* Models Beech 35–C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes, all serial numbers, that:

- (1) are certificated in any category;
- (2) incorporate a Teledyne Continental engine equipped with a turbonormalizing system; and
- (3) have Tornado Alley Turbo, Inc. Supplemental Type Certificate (STC) SA5223NM and STC SE5222NM incorporated.

**Note 1:** Cessna 185 series airplanes could have the subject clamp installed through the incorporation of Tornado Alley Turbo, Inc. STC SE00214DE and STC SE002215DE. The FAA has determined that the cracks at the weld spots in these V-band clamps are occurring because of the specific configuration of the Raytheon airplanes. We have received no reports of service problems with the affected V-band clamps installed on Cessna 185 series airplanes.

(b) *Who must comply with this AD?*

Anyone who wishes to operate any of the airplanes referenced in paragraph (a) of this AD that are on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?*

The actions required by this AD are intended to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. This could result in the release of high temperature gases inside the engine compartment with a consequent fire in the engine compartment.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
Repetitively replace the V-band exhaust clamp, Aeroquip part number 00624–4404C375–M..	Upon accumulating 400 hours time-in-service (TIS) after incorporating Tornado Alley Turbo, Inc. STC SA5223NM and STC SE5222NM on the airplane or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 400 hours TIS..	Use the procedures in the Turbo-Flite™ 520/550 System Maintenance and Troubleshooting manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

- (1) Your alternative method of compliance provides an equivalent level of safety; and
- (2) The Manager, Rotorcraft Directorate, Special Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190.

**Note 2:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mr. Peter Hakala, Aerospace Engineer, FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190; telephone: (817) 222–5145; facsimile: (817) 222–5785.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(1) In order for this permit to be granted, the airplane must pass the push/pull test specified in Tornado Alley Turbo, Inc., Mandatory Service Bulletin Number TAT 98–1, dated November 21, 1998.

(2) Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may accomplish the push/pull test referenced in paragraph (g)(1) of this. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Tornado Alley Turbo, Inc., 300 Airport Road, Ada, Oklahoma 74820; or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 11, 2000.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26712 Filed 10–17–00; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 801

[Docket No. 00N–1520]

#### Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency, Change From “Junior” to “Light”

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its menstrual tampon labeling regulation to change the current term for tampons that absorb 6 grams (g) and under of fluid. A tampon with 6 g or less absorbency is currently required to

be labeled as "junior". FDA is proposing to change the term to "light". The term "junior" implies that it is only for younger, teenage women, while in fact, women of any age with light menstrual flow may find this tampon useful. FDA wishes to encourage women to use the lowest absorbency tampon appropriate for their flow to help minimize the risk of toxic shock syndrome (TSS). At present, FDA requires standardized terms to be used for the labeling of a menstrual tampon to indicate its particular absorbency. This enables consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles. FDA is issuing this proposed rule under the Federal Food, Drug, and Cosmetic Act (the act).

**DATES:** Submit written comments on the proposed rule by January 16, 2001. See section II of this document for the proposed effective date of a final rule based on this document.

**ADDRESSES:** Submit written comments on the proposed rule to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA published a final rule which, among other things, amended its menstrual tampon labeling regulation to standardize the existing absorbency terms (junior, regular, super, and super plus) corresponding to the following four absorbency ranges: Less than 6, 6 to 9, 9 to 12, and 12 to 15 g of fluid. Recently, the agency proposed a term for 15 to 18 g absorbency tampons ("ultra"). FDA is finalizing that rule elsewhere in this issue of the **Federal Register**. When commenting on that proposed rule, several tampon manufacturers suggested changing the term for the 6 g and under tampon from "junior" to "light", because "junior" implies for teenagers only. These manufacturers argued that, in reality, the least absorbent tampon should be used by all women, commensurate with the amount of their menstrual flow. The age or size of a woman should not be a deciding factor. The agency agrees that this term change would help women decide which tampon they should use.

FDA is aware of literature suggesting that the lowest absorbency of tampon

that is effective should be chosen, to minimize the risk of TSS. FDA believes that using the term "light" for low absorbency tampons (rather than "junior") will help women make the appropriate selection.

Tampons are currently classified into class II (special controls) (see 21 CFR 884.5460 and 884.5470). Any person who is required to register under section 510 of the act (21 U.S.C. 360) and part 807 of the regulations (21 CFR part 807) and who intends to begin the introduction or delivery for introduction into interstate commerce of a tampon for commercial distribution is required to submit a premarket notification to FDA at least 90 days before making such introduction or delivery in accordance with section 510(k) of the act (21 U.S.C. 360(k)) and subpart E of part 807. Under § 807.87(e), a premarket notification for a device is to contain, among other things, labeling for the device.

**II. Effective Date**

FDA proposes that any final rule that may issue based on this proposal become effective 90 days after the date of publication of the final rule in the **Federal Register**.

**III. Environmental Impact**

The agency has determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**IV. Analysis of Impacts**

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104-121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Any small entity that decided to enter the market with this product would incur no additional costs because of this rule. That small entity would already be required to identify the absorbency ranges of its tampons. The agency, therefore, certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation.

**V. Request for Comments**

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by January 16, 2001. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**VI. Paperwork Reduction Act of 1995**

This proposed rule does not contain information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). This proposed rule requires public disclosure, on labeling, of information supplied by FDA to tampon manufacturers. Such information is not included in the definition of "collection of information" under the Paperwork Reduction Act regulation (5 CFR 1320.3(c)(3)).

**List of Subjects in 21 CFR Part 801**

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 801 be amended as follows:

**PART 801—LABELING**

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

2. Section 801.430 is amended by revising the table in paragraph (e)(1) to read as follows:

**§ 801.430 User labeling for menstrual tampons.**

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Ranges of absorbency in grams <sup>1</sup>	Corresponding term of absorbency
6 and under	Light absorbency.
6 to 9	Regular absorbency.
9 to 12	Super absorbency.
12 to 15	Super plus absorbency.
15 to 18	Ultra absorbency.
Above 18	No term.

<sup>1</sup> These ranges are defined, respectively, as follows: Less than or equal to 6 grams (g); greater than 6 g up to and including 9 g; greater than 9 g up to and including 12 g; greater than 12 g up to and including 15 g; greater than 15 g up to and including 18 g; and greater than 18 g.

\* \* \* \* \*

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–26249 Filed 10–17–00; 8:45 am]

**BILLING CODE 4160–01–F**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[MO 114–1114; FRL–6885–7]

**Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes; Dent Township**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the state of Missouri and Missouri's request to redesignate the lead nonattainment area in western Iron County, Missouri, to attainment of the National Ambient Air Quality Standards (NAAQS). EPA proposes to approve the maintenance plan for this area including a consent order which was submitted with the redesignation request, and also proposes to approve the revision to Missouri's Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations rule which ensures the permanent and enforceable emission reductions by clarifying the emissions limits for the Doe Run Resource Recycling Facility, and removes the text which could have allowed this facility to resume operation as a primary smelter.

In the final rules section of today's **Federal Register**, EPA is approving the

state's SIP revision and redesignation request as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed action must be received in writing by November 17, 2000.

**ADDRESSES:** Comments may be mailed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551–7975.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of today's **Federal Register**.

Dated: September 27, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

[FR Doc. 00–26502 Filed 10–17–00; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 721**

**OPPTS–50639; FRL–6745–5**

**RIN 2070–AD43**

**Perfluorooctyl Sulfonates; Proposed Significant New Use Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the following chemical substances: Perfluorooctanesulfonic acid (PFOSA) and certain of its salts (PFOSS), perfluorooctanesulfonyl fluoride (PFOSF), certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures. All of these chemical substances are referred to collectively in this proposed rule as perfluorooctyl sulfonates, or PFOS. This proposed rule would require manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of these chemical substances for the significant new uses described in this document. EPA believes that this action is necessary because the chemical substances included in this proposed rule may be hazardous to human health and the environment. The required notice would provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** Comments, identified by the docket number OPPTS–50639, are due November 17, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the

**SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-50639 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* Mary Dominiak, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260-7768; fax number: (202) 260-1096; e-mail address: dominiak.mary@epa.gov.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Notice Apply to Me?*

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in Table 2 or Table 3 of this unit. Persons who intend to import any chemical substance governed by a final SNUR are subject to

the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 12.728. Those persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export any of the chemical substances listed in Table 2 or Table 3 of this unit are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR 721.20 and 40 CFR part 707, subpart D. Entities potentially affected by the SNUR requirements in this proposed rule may include, but are not limited to:

**TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE SNUR REQUIREMENTS**

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers or importers	325	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances
Chemical exporters	325	Persons who export, or intend to export, one or more of the subject chemical substances

This listing is not intended to be exhaustive. Instead, it provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in Table 1 of this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist in determinations of

whether this action might apply to certain entities. To determine if you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR 721.5 for SNUR-related obligations. Also, consult Unit III. Note that because this proposed rule would designate certain manufacturing and importing activities

as significant new uses, persons that solely process the chemical substances that would be covered by this action would not be subject to the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**TABLE 2.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001**

CAS No./PMN	Ninth Collective Index chemical name
383-07-3 .....	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester.
423-82-5 .....	2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester.
2250-98-8 .....	1-Octanesulfonamide, N,N'-[phosphinylidynetris(oxy-2,1-ethanediy)]tris[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-], ammonium salt.
14650-24-9 .....	2-Propenoic acid, 2-methyl-, 2-[[heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester.
30381-98-7 .....	1-Octanesulfonamide, N,N'-[phosphinylidynetris(oxy-2,1-ethanediy)]bis[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-], ammonium salt.
55120-77-9 .....	1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt.
57589-85-2 .....	Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[heptadecafluorooctyl)sulfonyl]oxy]phenyl]amino]carbonyl]-, monopotassium salt.
61660-12-6 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[3-(trimethoxysilyl)propyl]-.
67969-69-1 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[2-(phosphonoxy)ethyl]-, diammonium salt.
68156-01-4 .....	Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt.
68329-56-6 .....	2-Propenoic acid, eicosyl ester, polymer with 2-[[heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate.
68555-91-9 .....	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate.
68555-92-0 .....	2-Propenoic acid, 2-methyl-, 2-[[heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate.

TABLE 2.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001—Continued

CAS No./PMN	Ninth Collective Index chemical name
68608-14-0 .....	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 1,1'-methylenebis[4-isocyanatobenzene].
68909-15-9 .....	2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate.
70776-36-2 .....	2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 1,1-dichloroethene, 2-[[[heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, N-(hydroxymethyl)-2-propenamide, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate.
73772-32-4 .....	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluorohexyl)sulfonyl]amino]-2-hydroxy-, monosodium salt.
81190-38-7 .....	1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfo)propyl][(tridecafluorohexyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt.
94133-90-1 .....	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt.
117806-54-9 .....	1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt.
127133-66-8 .....	2-Propenoic acid, 2-methyl-, polymers with Bu methacrylate, lauryl methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate.
129813-71-4 .....	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl).
148240-78-2 .....	Fatty acids, C18-unsatd., trimers, 2-[[[heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters.
148240-79-3 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl esters.
148240-80-6 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl esters.
148240-81-7 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl esters.
148240-82-8 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters.
148684-79-1 .....	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 1,6-diisocyanatohexane homopolymer and ethylene glycol.
178535-22-3 .....	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl)-, polymers with 1,1'-methylenebis[4-isocyanatobenzene] and polymethylenepolyphenylene isocyanate, 2-ethylhexyl esters, Me Et ketone oxime-blocked.
P-83-1102 .....	Fatty acids, linseed-oil, dimers, 2-[[[heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters.
P-84-1163 .....	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatohexyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine.
P-84-1171 .....	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine.
P-86-0301 .....	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts.
P-89-0799 .....	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate.
P-94-0545 .....	1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate.
P-94-0927 .....	2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfon amides-blocked.
P-94-2205 .....	Polymethylenepolyphenylene isocyanate and bis(4-NCO-phenyl)methane reaction products with 2-ethyl-1-hexanol, 2-butanone, oxime, N-ethyl-N-(2-hydroxyethyl)-1-C4-C8 perfluoroalkanesulfonamide.
P-94-2206 .....	Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propyl]group-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate.
P-96-1645 .....	Fatty acids, C18-unsatd., dimers, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl esters.
P-97-0790 .....	1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1).
P-98-0251 .....	2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride.
P-98-1272 .....	2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol].
P-99-0188 .....	Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide- and stearyl alc.-blocked.
P-99-0319 .....	Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs..

TABLE 3.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003

CAS No./PMN	Ninth Collective Index chemical name
307-35-7 .....	1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
307-51-7 .....	1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafuoro-
376-14-7 .....	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester

TABLE 3.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003—Continued

CAS No./PMN	Ninth Collective Index chemical name
423-50-7 .....	1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-
754-91-6 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
1652-63-7 .....	1-Propanaminium, 3-[[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide
1691-99-2 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-
1763-23-1 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
2795-39-3 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt
2991-51-7 .....	Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt
4151-50-2 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
17202-41-4 .....	1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt
24448-09-7 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-
25268-77-3 .....	2-Propenoic acid, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester
29081-56-9 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt
29117-08-6 .....	Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy-
29457-72-5 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt
31506-32-8 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-
38006-74-5 .....	1-Propanaminium, 3-[[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride
38850-58-7 .....	1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfoxypropyl)(tridecafluorohexyl)sulfonyl]amino]-, inner salt
67584-42-3 .....	Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt
67906-42-7 .....	1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafuoro-, ammonium salt
68298-62-4 .....	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol
68541-80-0 .....	2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate
68555-90-8 .....	2-Propenoic acid, butyl ester, polymer with 2-[[[(heptadecafluorooctyl)sulfonyl] methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate
68586-14-1 .....	2-Propenoic acid, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol
68649-26-3 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanedisulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc.
68867-60-7 .....	2-Propenoic acid, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl)
68867-62-9 .....	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl)
68891-96-3 .....	Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di-
68958-61-2 .....	Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy-
70225-14-8 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1)
71487-20-2 .....	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid
91081-99-1 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-, polymer with (chloromethyl)oxirane, 1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-N-methyl-1-butanedisulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-N-methyl-1-heptanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-N-methyl-1-hexanesulfonamide and 1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-N-methyl-1-pentanesulfonamide, hexanedioate (ester)
98999-57-6 .....	Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl)oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminiumchloride
182700-90-9 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides
L-92-0151 .....	2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-methyl-, 2-[ethyl [(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, and 2-propenoic acid
P-80-0183 .....	Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid

TABLE 3.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003—Continued

CAS No./PMN	Ninth Collective Index chemical name
P-86-0958 .....	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride
P-90-0111 .....	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl]
P-91-1419 .....	Poly(oxy-1,2-ethanediy), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(2-hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide-blocked
P-93-1444 .....	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride
P-95-0120 .....	Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediy]bis[[2-oxo-3,5-oxazolidinediyl)methylene]]bis[N-methyl-
P-96-1262 .....	Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether
P-96-1424 .....	2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomers with 2-[ethyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides
P-96-1433 .....	Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethyloxidoamino)propyl], potassium salts

*B. How Can I get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Law and Regulations," "Regulations and Proposed Rules," then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>. In addition, you may access other information about the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and related programs at <http://www.epa.gov/internet/oppts/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-50639. The official record consists of the documents referenced in this action, any public comments received during the comment period, and other information related to this rulemaking, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as all documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential

Information Center, Room NE B-607, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS-50639 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT's Document Control Office (DCO), East Tower Room G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260-7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov), or mail or deliver your computer disk to the addresses identified in Unit I.C.1. or I.C.2. Do not submit any information electronically that you consider to be CBI. E-mailed comments must be submitted as an ASCII file, avoiding the use of special characters or any form of encryption. Comments will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS-50639. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI Information that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comments that include any information claimed as CBI, a sanitized copy of the comments which does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final SNUR. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.



4. If you estimate potential burden or costs, explain how you arrived at the estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or data collection activity.

7. Make sure to submit your comments by the deadline specified in this document.

8. At the beginning of your comments, be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, your comments must identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the title, date, and **Federal Register** citation.

## II. Background

### A. What Action is the Agency Taking?

This proposal would require persons to notify EPA at least 90 days before commencing the manufacture or import of the chemical substances identified in Table 2 or Table 3 of Unit I.A., for the significant new uses described in this document. The chemical substances identified in Table 2 and Table 3 of Unit I.A. include PFOSA, PFOSS, PFOSF, certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures. These chemical substances are collectively referred to throughout this proposed rule as PFOS.

The significant new uses described by this notice are:

1. The manufacture or import for any use of any of the chemicals listed in Table 2 of Unit I.A. on or after January 1, 2001.

2. The manufacture or import for any use of any one or more of the chemicals listed in Table 3 of Unit I.A. in excess of an aggregate volume of 1,100,000 pounds per person per calendar year on or after January 1, 2001 and before January 1, 2003.

3. The manufacture or import for any use of any of the chemicals listed in Table 3 of Unit I.A. on or after January 1, 2003.

### B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency makes this determination by rule after considering all relevant factors, including those listed in TSCA section

5(a)(2). These factors include the volume of a chemical substance's production; the extent to which a use changes the type, form, magnitude, or duration of exposure to the substance; and the reasonably anticipated manner of producing or otherwise managing the substance. Once EPA makes this determination and promulgates a SNUR, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that significant new use (15 U.S.C. 2604 (a)(1)(B)).

### C. Which General Provisions Apply?

General provisions for SNURs are published under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Note that because this proposed rule would designate certain manufacturing and importing activities as significant new uses, persons that solely process the chemical substances that would be covered by this action would not be subject to the rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this proposed SNUR would be required to comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include: the information submission requirements of TSCA section 5(b) and 5(d)(1); the exemptions authorized by TSCA section 5 (h)(1), (2), (3), and (5); the export notification provisions of TSCA section 12(b); and the export notification requirements in 40 CFR part 707, subpart D. Once EPA receives a SNUN, EPA may take regulatory action under TSCA sections 5(e), 5(f), 6, or 7, if appropriate, to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

## III. Summary of this Proposed Rule

The chemical substances subject to this proposed SNUR are listed in Table 2 and Table 3 of Unit I.A. These chemical substances include PFOSA, PFOSS, PFOSF, certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures. All of these chemical

substances are referred to collectively in this proposed rule as perfluorooctyl sulfonates, or PFOS. All of these chemical substances have the potential to degrade back to PFOSA in the environment, and PFOSA does not degrade further. PFOSA is highly persistent in the environment and has a strong tendency to bioaccumulate. Studies have found PFOS in very small quantities in the blood of the general human population as well as in wildlife, indicating that exposure to the chemicals is widespread, and recent tests have raised concerns about their potential developmental, reproductive, and systemic toxicity (Refs. 1, 2, and 3). These factors, taken together, raise concerns for long term potential adverse effects in people and wildlife over time if PFOS should continue to be produced, released, and built up in the environment.

EPA believes that the chemical substances listed in Tables 2 and 3 of Unit I.A. are manufactured and imported in the United States only by the Minnesota Mining and Manufacturing Company (3M) (Refs. 4 and 5). 3M has committed to phase out these chemicals voluntarily by discontinuing the manufacture of certain of these chemical substances on a global basis for their most widespread uses by the end of December 2000, by steadily reducing their production volume on the remaining chemicals through 2001 and 2002, and by entirely discontinuing the manufacture of all of these PFOS chemicals by December 31, 2002 (Ref. 6). The chemicals listed in Table 2 of Unit I.A. are those which 3M has committed to cease manufacturing by December 31, 2000. The chemicals listed in Table 3 of Unit I.A. are those which 3M has committed first to reduce, and then to cease manufacturing by December 31, 2002. EPA believes that any manufacture or import of these PFOS chemicals occurring after 3M's global phase-out dates would increase the magnitude and duration of exposure to these chemicals. Therefore, EPA is proposing to designate the following as significant new uses:

1. Any manufacture or import for any use of the chemicals listed in Table 2 of Unit I.A. on or after January 1, 2001.

2. Any manufacture or import for any use of the chemicals listed in Table 3 of Unit I.A. in excess of an aggregate annual manufacture and import volume cap for all of these chemicals of 1,100,000 pounds per person per calendar year on or after January 1, 2001 and before January 1, 2003.

3. Any manufacture or import for any use of any of the chemicals listed in

Table 3 of Unit I.A. on or after January 1, 2003.

Given that no companies other than 3M are currently producing the chemicals listed on Table 3 of Unit I.A., and given the negative commercial and regulatory environment associated with these chemicals, EPA believes it is unlikely that companies would incur the costs associated with establishing

new manufacturing capacity for these chemicals in order to enter this market.

This proposed rule, when finalized, would require persons who intend to manufacture or import the PFOS chemicals listed in this proposed rule to notify EPA, through the submission of a SNUN, at least 90 days before commencing the manufacture or importation of any of these chemicals

for any use designated by this proposed SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that use before it occurs. These proposed requirements are summarized in the following Table 4:

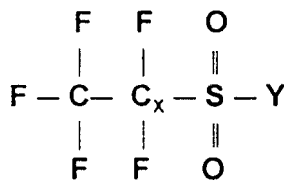
TABLE 4.—SUMMARY OF PROPOSED SNUR REQUIREMENTS

You must file a significant new use notice (SNUN) if you:		
Manufacture or import:	When?	How much?
Chemical substances listed in Table 2 of Unit I.A.	After December 31, 2000	Any amount
Chemical substances listed in Table 3 of Unit I.A.	January 1, 2001 through December 31, 2002	Aggregate amount exceeding 1,100,000 lbs per person per calendar year
Chemical substances listed in Table 3 of Unit I.A.	After December 31, 2002	Any amount

#### IV. Chemical Compound History

##### A. Defining PFOS

This proposed rule applies to a large group of fully fluorinated alkyl sulfonate-containing substances, none of which occur naturally. The Ninth Collective Index chemical names and CAS Registry Numbers (CAS No.) (when available) provided in Table 2 and Table 3 of Unit I.A. are for the specific chemical substances that are subject to the provisions contained in this proposed SNUR (for example, entry #8 on Table 3 of Unit I.A. lists CAS No. 1763–23–1 for the compound named 1-octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptafluoro-, commonly referred to as PFOSA). All of the chemical substances listed in Table 2 and Table 3 of Unit I.A. have a common chemical structure consisting of a PFOS moiety, as illustrated here, somewhere in the molecule.



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The number of carbon atoms present in the moiety varies from 4 to 10 (x = 3–9) among the listed chemicals. In addition, there are many examples of different chemical functionality (free acids (Y = OH), metal salts (Y = O<sup>–</sup> M<sup>+</sup>), sulfonyl halides (Y = X), sulfonamides (Y = NH<sub>2</sub>), and other derivatives). The listed chemical substances also include polymers.

The class of chemical substances including the perfluoroalkyl sulfonyl

moiety described by the structure shown in this unit contains more chemical substances than are specified in the lists in Table 2 and Table 3 of Unit I.A. Only the listed chemical substances, which are manufactured or imported exclusively by 3M and which 3M has voluntarily committed to cease producing, are subject to this SNUR. EPA is evaluating further this overall structural class of chemical substances and may take additional regulatory action as appropriate.

##### B. Environmental Fate

The basic building block of all of the PFOS chemicals is PFOSF, which is used as an intermediate in the production of the PFOS chemicals. PFOSA results from the chemical or enzymatic hydrolysis of PFOSF. Current information strongly supports that PFOSA is an extremely stable substance which resists breakdown by chemical or biological processes. Therefore PFOSA is the ultimate degradation product from PFOS chemicals and will persist in that form (Refs. 1 and 2).

EPA cannot currently conduct a definitive assessment of the environmental transport and partitioning of PFOS. The available data are limited and their accuracy uncertain. Also, the accuracy of the estimation models is limited by the quality of data input into them. Depending on what data are consulted and utilized, the environmental fate and transport of PFOS vary. Biological sampling recently discovered the presence of certain perfluoroalkyl compounds in fish and in fish-eating birds across the United States and in locations in Canada, Sweden, and the South Pacific (Ref. 1). The wide distribution of the chemicals in high

trophic levels is strongly suggestive of the potential for bioaccumulation/bioconcentration. The widespread presence of PFOS suggests the possibility of transport in air as well as water, but the multimedia equilibrium criterion model (EQC) suggests otherwise (Ref. 7). Using data provided by 3M as inputs, the model indicates that PFOS would fall out of air and partition almost equally in water and soil. The Henry's Law values calculated utilizing the vapor pressure of 3.31 E-4 Pa@20 C and water solubility values of 370, 570, 5, and 25 milligram/Liter (mg/L) in fresh water, pure water, unfiltered seawater, and filtered seawater, respectively yielded Henry's Law values of 4.7 E-9, 7.2 E-9, 6.4 E-11, and 3.2 E-10 atm.m<sup>3</sup>/mole (atmospheres per meter cubed per mole), respectively. The vapor pressure and water solubility values were obtained from Table 4, p.16 of the March 1, 2000, white paper by 3M, *Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate and Effects* (Ref. 1). These Henry's Law values suggest that volatilization from water to air is not very likely. According to 3M, testing is planned and/or underway for the environmental properties, fate, and transport of PFOS (Ref. 1). With more complete data, EPA would be able to make more definitive assessments. With the present data, the Agency can only speculate on environmental transport and partitioning of PFOS, although current information suggests strongly that it is persistent and may bioaccumulate.

##### C. Health Effects

The Agency's hazard analysis for PFOS is a review of health hazard and biomonitoring data (Ref. 8). Toxicology studies show that PFOS is well absorbed

orally and distributes primarily in the serum and liver. PFOS can also be formed as a metabolite of other perfluorinated sulfonates. It does not appear to be further metabolized. Elimination from the body is slow and occurs via both urine and feces. Serum PFOS levels in three retired male 3M chemical workers have been followed for 5½ years and suggest a mean elimination half-life ( $t_{1/2}$ ) of 1,428 days (approximately 4 years). Based on the pharmacokinetic data obtained from a 28-day oral study in male and female monkeys, a volume of distribution ( $V_d$ ) of 0.19 L/kilogram (kg) was reported; no sex differences in the pharmacokinetic parameters were noted.

PFOS has shown moderate acute toxicity by the oral route with a rat  $LD_{50}$  of 251 mg/kg. A 1-hour  $LC_{50}$  of 5.2 mg/L in rats has been reported. PFOS was found to be mildly irritating to the eyes and non-irritating to the skin of rabbits. PFOS was negative in mutagenicity studies in five strains of salmonella and did not induce micronuclei in an *in vivo* mouse bone marrow micronucleus assay.

Numerous repeat-dose oral toxicity studies on PFOS have been conducted in rats and primates. Adverse signs of toxicity observed in rat studies included increases in liver enzymes, hepatic vacuolization and hepatocellular hypertrophy, gastrointestinal effects, hematological abnormalities, weight loss, convulsions, and death. These effects were reported at doses of 2 mg/kg/day and above. Adverse signs of toxicity observed in Rhesus monkey studies included anorexia, emesis, diarrhea, hypoactivity, prostration, convulsions, atrophy of the salivary glands and the pancreas, marked decreases in serum cholesterol, and lipid depletion in the adrenals. The dose range for these effects was reported between 1.5–300 mg/kg/day. No monkeys survived beyond 3 weeks into treatment at 10 mg/kg/day, or beyond 7 weeks into treatment at doses as low as 4.5 mg/kg/day. At doses as low as 0.75 mg/kg/day, Cynomolgus monkeys exhibited low food consumption, excessive salivation, labored breathing, hypoactivity, ataxia, hepatic vacuolization and hepatocellular hypertrophy, significant reductions in serum cholesterol levels, and death.

Postnatal deaths and other developmental effects were reported at low doses in offspring in a 2-generation reproductive toxicity study in rats. At the two highest doses of 1.6 and 3.2 mg/kg/day, pup survival in the first generation was significantly decreased. All first generation offspring (F1 pups) at the highest dose died within a day

after birth while close to 30% of the F1 pups in the 1.6 mg/kg/day dose group died within 4 days after birth. As a result of the pup mortality in the two top dose groups, only the two lowest dose groups, 0.1 and 0.4 mg/kg/day, were continued into the second generation. The no observed adverse effect level (NOAEL) and lowest observed adverse effect level (LOAEL) for the second generation offspring (F2 pups) were 0.1 mg/kg/day and 0.4 mg/kg/day, respectively, based on reductions in pup body weight. Reversible delays in reflex and physical development were also observed in this study, raising concerns about the potential for developmental neurotoxicity following exposure to PFOS.

Developmental effects were also reported in prenatal developmental toxicity studies in the rat and rabbit, although at slightly higher dose levels. Signs of developmental toxicity were evident at doses of 5 mg/kg/day and above in rats administered PFOS during gestation. Significant decreases in fetal body weight and significant increases in external and visceral anomalies, delayed ossification, and skeletal variations were observed. Abnormalities of the lens of the eye were also reported at doses as low as 1 mg/kg/day in one rat prenatal developmental study, but could not be repeated in a second study of similar design. At doses of 2.5 mg/kg/day and above, significant reductions in fetal-body weight and significant increases in delayed ossification were observed in rabbits administered PFOS during gestation.

In human blood samples, PFOS has been detected in the serum of occupational and general populations in the parts per million (ppm) to parts per billion (ppb) range. In the United States, recent blood serum levels of PFOS in manufacturing employees have been as high as 12.83 ppm, while in the general population, serum collected from blood banks and commercial sources have indicated mean PFOS levels of 30–44 ppb. Levels in a very small sample of children yielded even higher results, with a mean level of 54 ppb.

Sampling of several wildlife species from a variety of sites across the United States has shown widespread distribution of PFOS. In recent analyses, PFOS was detected in the ppb range in the plasma of several species of eagles, wild birds, and fish. Endogenous levels of PFOS have also been detected in the ppb range in the livers of unexposed rats used in toxicity studies, presumably through a dietary source (fishmeal).

Although the PFOS levels detected in the blood of the general population are

low, this widespread presence, combined with the persistence, the bioaccumulative potential, and the reproductive and subchronic toxicity of the chemical, raises concerns for potential adverse effects on people and wildlife over time should the chemical substances continue to be produced, released, and accumulated in the environment.

#### D. Exposure Data

As indicated in Unit IV.C., PFOS has been detected at low levels in the blood of humans and wildlife throughout the United States, providing clear evidence of widespread exposure to the chemical. PFOS has been in commercial use since the 1950's, predominantly in soil and stain-resistant coating products on fabrics, carpets, and leather, and in grease and oil resistant coatings on paper products, including food contact papers. Other uses leading to environmental releases include fire fighting foams. The various surface treatment uses constitute the largest volume of PFOS production and are believed to present the greatest potential for widespread human and environmental exposure to PFOS. Studies are underway to determine the routes of exposure which have led to the detection of PFOS in human and animal blood. There are several potential pathways that may account for the widespread exposure to PFOS including: Dietary intake from the consumption of food wrapped in paper containing PFOS derivatives; inhalation from aerosol applications of PFOS-containing consumer products; and inhalation, dietary, or dermal exposures resulting from manufacturing, as well as industrial, commercial, and consumer use and disposal of PFOS-derived chemicals and products.

#### E. Use Data

PFOS and related sulfonyl-based fluorochemicals are used in a variety of products, which can be divided into three main categories of use: Surface treatments, paper protectors, and performance chemicals (Ref. 4). The various surface treatment and paper protection uses constitute the largest volume of PFOS production and are believed to present the greatest potential for widespread human and environmental exposure to PFOS.

PFOS chemicals produced for surface treatment applications provide soil, oil, and water resistance to personal apparel and home furnishings. Specific applications in this use category include protection of apparel and leather, fabric/upholstery, and carpet. These applications are undertaken in

industrial settings by customers such as textile mills, leather tanneries, finishers, fiber producers, and carpet manufacturers. PFOS chemicals are also used in aftermarket treatment of apparel and leather, upholstery, carpet, and automobile interiors by the general public or professional applicators (Ref. 4). In 2000, the domestic production volume of PFOS chemicals for this use category is estimated to be approximately 2.4 million pounds (Ref. 6).

PFOS chemicals produced for paper protection applications provide grease, oil, and water resistance to paper and paperboard as part of a sizing agent formulation. Specific applications in this use category include food contact applications (plates, food containers, bags, and wraps) regulated by the Food and Drug Administration (FDA) under 21 CFR 176.170, as well as non-food contact applications (folding cartons, containers, carbonless forms, and masking papers). The application of

sizing agents is undertaken mainly by paper mills and, to some extent, converters who manufacture bags, wraps, and other products from paper and paperboard (Ref. 4). In 2000, the domestic production volume of PFOS chemicals for this use category is estimated to be approximately 2.7 million pounds (Ref. 6).

PFOS chemicals in the performance chemicals category are used in a wide variety of specialized industrial, commercial, and consumer applications. Specific applications include fire fighting foams, mining and oil well surfactants, acid mist suppressants for metal plating and electronic etching baths, alkaline cleaners, floor polishes, photographic film, denture cleaners, shampoos, chemical intermediates, coating additives, carpet spot cleaners, and as an insecticide in bait stations for ants (Ref. 4). In 2000, the domestic production volume of PFOS chemicals for this use category is estimated to be

approximately 1.5 million pounds (Ref. 6).

On May 16, 2000, following discussions with the Agency, 3M issued a press release announcing that it would discontinue the production of perfluorooctanyl chemicals used to produce some of its repellent and surfactant products. In its statement, 3M committed to "substantially phase out production" by the end of calendar year 2000 (Ref. 9). In subsequent correspondence with the Agency, 3M provided a schedule documenting its complete plan for discontinuing all manufacture of specific PFOS and related chemicals for most surface treatment and paper protection uses (including food contact uses regulated by the FDA) by the end of 2000, and discontinuing all manufacture for any uses by the end of 2002 (Ref. 6). This schedule, and 3M's anticipated production volumes, are summarized in Table 5.

TABLE 5.—ANTICIPATED ANNUAL U.S. PRODUCTION VOLUME (POUNDS) FOR PFOS USE CATEGORIES

Use category	2000	2001	2002	2003
Surface treatment	2,356,700	0	0	0
Paper protection	2,670,700	0	0	0
Performance chemicals	1,462,500	1,011,900	443,700	0
Total	6,489,900	1,011,900	443,700	0

According to the information currently available to EPA, 3M is the sole manufacturer of PFOS chemicals affected by this proposed SNUR (Ref. 5). 3M plans to discontinue the manufacture of the chemicals identified in Table 2 of Unit I.A. (in general, those associated with surface treatment and paper protection uses) by the end of 2000 and to discontinue the chemicals identified in Table 3 of Unit I.A. (in general, those associated with performance chemical applications) by the end of 2002.

#### V. Objectives and Rationale for this Proposed Rule

In determining what would constitute a significant new use for the chemical substances that are the subjects of this proposed SNUR, EPA considered relevant information on the toxicity of the substances, likely exposures associated with potential uses, information provided by industry sources, and the four factors listed in TSCA section 5(a)(2) and Unit II.B.

Based on these considerations, EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this

proposed rule. EPA wants to ensure that:

1. EPA would receive notice of any person's intent to manufacture or import PFOS chemicals for a designated significant new use before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or importing the subject chemical substances for a significant new use.

3. EPA would be able to regulate prospective manufacturers and importers of the subject chemical substances before a significant new use occurs, provided such regulation is warranted pursuant to TSCA section 5(e) or (f).

EPA has concerns regarding the toxicity, persistence, and bioaccumulative potential of the chemical substances that are included in this proposed SNUR. 3M, the sole manufacturer of these chemicals in the United States, has chosen voluntarily to discontinue their manufacture and sale for all uses by December 31, 2002, and to substantially reduce their manufacture for their most widespread uses by December 31, 2000. With 3M's

exit from the market, EPA believes that all manufacture of these chemicals likely will cease. However, EPA is concerned that manufacture could be reinitiated in the future, and wants the opportunity to evaluate and control, if appropriate, exposures associated with that activity. The notice that would be required by the SNUR would provide EPA with the opportunity to evaluate activities associated with a significant new use as proposed herein and an opportunity to protect against unreasonable risks, if any, from exposure to the substances which could result.

Given that no companies other than 3M are currently producing the chemicals listed on Table 3 of Unit I.A., and given the negative commercial and regulatory environment associated with these chemicals, EPA believes it is unlikely that companies would incur the costs associated with establishing new manufacturing capacity for these chemicals in order to enter this market. EPA will use information submitted pursuant to the Inventory Update Rule (40 CFR part 710) to track the production volumes of these chemicals. In the event that the phase-out of these chemicals does not progress as

described in this proposed rule, EPA may pursue additional regulatory action as appropriate under TSCA sections 4, 6, and 8.

## VI. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for the chemical substances listed in Tables 2 and 3 of Unit I.A. In addition, EPA determined that these chemical substances are currently not subject to Federal notification requirements.

1. Promulgate a chemical-specific TSCA section 8(a) reporting rule for the chemical substances listed in Tables 2 and 3 of Unit I.A. Under a TSCA section 8(a) rule, EPA could require any person to report information to the Agency when they intend to manufacture or import the substances listed in Tables 2 and 3 of Unit I.A. for the significant new uses listed in this proposed rule (15 U.S.C. 2607). However, the use of TSCA section 8(a) rather than SNUR authority would not provide the opportunity for EPA to review human and environmental hazards and exposures associated with the new uses of these substances and, if necessary, to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about these chemical substances and its interest in having the opportunity to regulate these substances further as needed, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for those chemical substances would not meet all of EPA's regulatory objectives.

2. Regulate the chemical substances listed in Tables 2 and 3 of Unit I.A. under TSCA section 6. EPA must regulate under TSCA section 6 if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. Given the decision by the sole manufacturer 3M to discontinue manufacturing these chemicals, and thus to remove the bulk of the existing potential risk which they present, EPA concluded that risk management action under TSCA section 6 is probably not necessary at this time. This proposed SNUR will allow the Agency to address the potential risks

associated with any intended significant new use of these substances. If the phase-out of these chemicals does not occur as anticipated, EPA may reconsider this decision and pursue additional regulatory action as appropriate.

## VII. Applicability of Proposed Rule to Uses Occurring Before the Effective Date of the Final Rule

EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing.

Persons who begin commercial manufacture or import of PFOS for the significant new uses listed in this proposed SNUR after the proposal has been published must stop that activity before the effective date of the final rule. Persons who ceased those activities will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who begin commercial manufacture or import of these chemical substances between the proposal and the effective date of the SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

## VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a SNUN. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to, or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25).

However, in view of the potential health and environmental risks posed by the significant new uses of the chemical substances listed in Table 2 and Table 3 of Unit I.A., EPA requests that potential SNUN submitters include data that would permit a reasoned evaluation of risks posed by these chemical substances when used for an intended significant new use. EPA currently believes that the known or reasonable ascertainable results of the

following tests could help adequately characterize possible health effects of these chemical substances: Reproductive and developmental toxicity studies, mutagenicity, gene mutation, immunotoxicity, neurotoxicity, carcinogenicity, and acute, subchronic, and chronic toxicity studies, as well as pharmacokinetics and mechanistic studies. Because of the specific concerns that EPA has for the persistence and bioaccumulation potential of these chemicals, EPA also encourages SNUN submitters to provide information on environmental fate and transport, specifically including measured values for the octanol/water partition coefficient (log P), log of the soil/sediment adsorption coefficient (log K<sub>oc</sub>), bioconcentration factor (BCF), melting and/or boiling point, vapor pressure, Henry's Law constant, biodegradation, atmospheric oxidation and the fugacity-based multimedia equilibrium criterion level III (EQC III) model (Ref. 10). However, completion of those studies may not be the only means of identifying potential risks. For example, analyses of potential exposure may demonstrate that associated risks would be of low concern. A SNUN submitted without accompanying test data may increase the likelihood that EPA will take action under TSCA section 5(e).

EPA encourages persons to consult with the Agency before submitting a SNUN for any of the PFOS substances listed in Table 2 or Table 3 of Unit I.A. As part of this optional pre-notice consultation, EPA will discuss specific test data it believes are necessary to evaluate a significant new use of the chemical substances and advise the submitter on the selection of test protocols. The Agency requests that all test data be developed according to the TSCA Good Laboratory Practice Standards in 40 CFR part 792. Failure to do so may result in EPA's finding that submitted data are insufficient to reasonably evaluate the health effects and public health implications of these chemical substances.

EPA urges SNUN submitters to provide detailed information on human and environmental exposures that would result or could reasonably be anticipated to result from the significant new uses of the chemical substances listed in Table 2 and Table 3 of Unit I.A. and at § 721.9582 of the proposed regulation. In addition, EPA encourages persons to submit information on potential benefits of these chemical substances and information on risks posed by these chemical substances compared to risks posed by possible substitutes.

## IX. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for PFOS listed in Table 2 and Table 3 of Unit I.A. These potential costs are related to the submission of SNUNs, the export notification requirements of TSCA section 12(b), and the development of test data. EPA notes that, with the possible exception of the export notification requirements, these costs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this SNUR.

### A. SNUNs

Because of uncertainties related to predicting the number of SNUNs that will be submitted as a result of this SNUR, EPA is unable to calculate the total annual cost of compliance with the final rule. However, EPA estimates that the cost for preparation and submission of a SNUN ranges from approximately \$8,500 to \$9,800, which includes a \$2,500 user fee (Ref. 11). EPA notes that small businesses with annual sales of less than \$40 million are subject to a reduced user fee of \$100.

Based on past experience with SNURs and the low number of SNUNs which are submitted on an annual basis, EPA believes that there would be few, if any, SNUNs submitted as a result of this SNUR. Furthermore, no company is required to submit a SNUN for the chemicals listed in this SNUR unless that company decides to begin manufacture or importation those chemicals. As a result, EPA expects that companies would be able to determine if the burden of submitting a SNUN would be likely to create significant adverse economics impacts for the company prior to incurring SNUN-related costs.

### B. Export Notification

As noted in Unit II.A., persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611 (b)). These provisions require that a company notify EPA of the first shipment to a particular country of an affected chemical. EPA believes that most companies comply with these provisions by compiling a list of products that are subject to TSCA section 12(b) reporting. Outgoing orders are checked to see if the chemical or product is on the list, and whether it is the first shipment to the importing country or the first shipment of the calendar year to that country. If so, a form letter is sent to EPA. In most cases,

the entire process is computerized. The estimated cost of the TSCA section 12(b)(1) export notification, which would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be \$83.38 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and \$19.08 for each subsequent export notification submitted by that exporter (Ref. 12).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications, the relatively few companies with fluorocarbon production capabilities, and the limited number of chemicals listed in this SNUR. If companies were to manufacture any of the chemicals covered by this SNUR for export only, these companies would incur costs associated with export notification even if these companies decided to forgo any domestic significant new use. EPA is not aware of any companies in this situation, and expects that any potential impact would be limited to the small burden of export notification.

### C. Testing

In Unit VIII., EPA has identified certain tests that SNUN submitters may choose to conduct to assist EPA in evaluating the risks posed by these chemical substances when used for an intended significant new use. The estimated cost of these tests ranges from \$1,450 for the acute oral toxicity test using the up-or-down method to \$2.24 million for the 2-species carcinogenicity test by the inhalation route (Ref. 13).

As noted in Unit VIII., development of any particular test data would be at the discretion of the submitter of the SNUN. EPA is not able to predict which specific tests will be conducted for chemicals that are the subject of SNUNs. However, EPA notes that companies would be able to determine if the burden of developing test data would be likely to create significant adverse economic impacts for the company prior to incurring these testing costs.

## X. References

These references have been placed in the official record that was established under docket control number OPPTS-50639 for this rulemaking as indicated in Unit I.B.2. Reference documents

identified with an administrative record number (AR) are cross-indexed to non-regulatory, publicly accessible information files maintained in the TSCA Nonconfidential Information Center. Copies of these documents can be obtained as described in Unit I.B.2.

1. (AR226-0620) Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. 3M. St. Paul, MN. March 1, 2000.

2. (AR226-0547) The Science of Organic Fluorochemistry. 3M. St. Paul, MN. February 5, 1999.

3. (AR226-0548) Perfluorooctane Sulfonate: Current Summary of Human Sera, Health and Toxicology Data. 3M. St. Paul, MN. January 21, 1999.

4. (AR226-0550) Fluorochemical Use, Distribution, and Release Overview. 3M. St. Paul, MN. May 26, 1999.

5. Rice, Cody. Domestic Manufacturers or Importers of PFOS Chemicals Other Than 3M. USEPA/OPPT/EETD. Washington, DC. August 31, 2000.

6. (AR226-0600) Weppner, William A. Phase-out Plan for POSF-Based Products. 3M. St. Paul, MN. July 7, 2000.

7. MacKay, D., DiGuardo, A., Paterson, S., and Cowan, C.E. Evaluating the Environmental Fate of a Variety of Types of Chemicals Using the EQC Model. Environmental Toxicology and Chemistry. SETAC Press. Houston, TX. 1996. Vol. 15, No. 9, pp.1627-1637.

8. Seed, Jennifer. Hazard Assessment and Biomonitoring Data on Perfluorooctane Sulfonate—PFOS. USEPA/EPA/RAD. Washington, DC. August 31, 2000.

9. 3M Phasing Out Some of its Specialty Materials. 3M News. 3M. St. Paul, MN. May 16, 2000.

10. Guidelines for the requested fate and transport data can be found in OPPTS Harmonized Test Guidelines, Series 835, Fate, Transport And Transformation Test Guidelines. These guidelines, both Public Drafts and Finals, are available electronically in PDF (portable document format) on the EPA World Wide Web site, see Unit I.B.1., or in paper by contacting the OPP Public Docket at (703) 305-5805 or by e-mail at: opp-docket@epa.gov. Final guidelines, only, are available from the U.S. Government Printing Office Bookstore, 810 North Capitol St., NW., Washington, DC or by calling (202) 512-1800 and ordering ASCII disks or paper copies. The EQC model is available for download from the Trent University web site at <http://www.trentu.ca/envmodel>.

11. (AR 204-001) TSCA Section 5(a)(2) Significant New Use Rules for

Existing Chemicals. ICR #1188.06, OMB No. 2070-0038 (Undated).

12. (AR 205-001) TSCA Section 12(b) Notification of Chemical Exports. ICR #0795.10, OMB No. 2070-0030 (Undated).

13. Rice, Cody. Estimated Costs of Testing Recommended for PFOS SNUR. USEPA/OPPT/EETD. Washington, DC. July 25, 2000.

#### **XI. Regulatory Assessment Requirements**

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not a "significant regulatory action" subject to review by OMB, because SNURs do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with past SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

Similarly, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the "Attorney General's Supplemental

Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities currently engage in such activity. Since a SNUR requires merely that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no economic impact will even occur until someone decides to engage in those activities. As a voluntary action, it is reasonable to presume that this decision would be based on a determination by the person submitting the SNUN that the potential benefits would outweigh the costs. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In fact, EPA expects to receive few, if any, SNUNs from either large or small entities in response to any SNUR. Therefore, EPA believes that, the economic impact of complying with a

SNUR is not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 USC 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070-0038 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost of between \$5,957 and \$7,192 per SNUN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice, and maintain the required records. This burden estimate does not include 1 hour of technical time at \$64.30 per hour estimated to be required for customer notification of SNUR requirements, or the \$2,500 user fee for submission of a SNUN (\$100 for businesses with less than \$40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, as instructed in Unit I.C. or to the Director, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

#### **List of Subjects in 40 CFR Part 721**

Environmental Protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.



Dated: October 12, 2000.

**PART 721—[AMENDED]****§ 721.9582 Certain perfluorooctyl sulfonates.****William H. Sanders, III**Director, Office of Pollution Prevention and  
Toxics.Therefore, it is proposed that 40 CFR  
chapter I be amended as follows:1. The authority citation for part 721  
would continue to read as follows:**Authority:** 15 U.S.C. 2604, 2607 and  
2625(e).2. By adding new § 721.9582 to  
subpart E to read as follows:(a) *Chemical substances and  
significant new uses subject to reporting.*  
(1) The chemical substances listed in  
Tables 1 and 2 of this paragraph are  
subject to reporting under this section  
for the significant new uses described in  
paragraph (a)(2) of this section.**TABLE 1.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001**

CAS No./PMN	Ninth Collective Index chemical name
383-07-3 .....	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester.
423-82-5 .....	2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester.
2250-98-8 .....	1-Octanesulfonamide, N,N',N''-[phosphinylidynetris(oxy-2,1-ethanediyl)]tris[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-].
14650-24-9 .....	2-Propenoic acid, 2-methyl-, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester.
30381-98-7 .....	1-Octanesulfonamide, N,N'-[phosphinicobis(oxy-2,1-ethanediyl)]bis[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-], ammonium salt.
55120-77-9 .....	1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt.
57589-85-2 .....	Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[[(heptadecafluorooctyl)sulfonyl]oxy]phenyl]amino]carbonyl]-, monopotassium salt.
61660-12-6 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[3-(trimethoxysilyl)propyl]-.
67969-69-1 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[2-(phosphonoxy)ethyl]-, diammonium salt.
68156-01-4 .....	Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt.
68329-56-6 .....	2-Propenoic acid, eicosyl ester, polymer with 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate.
68555-91-9 .....	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate.
68555-92-0 .....	2-Propenoic acid, 2-methyl-, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate.
68608-14-0 .....	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 1,1'-methylenebis[4-isocyanatobenzene].
68909-15-9 .....	2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate.
70776-36-2 .....	2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 1,1-dichloroethene, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, N-(hydroxymethyl)-2-propenamide, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate.
73772-32-4 .....	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluoroheptyl)sulfonyl]amino]-2-hydroxy-, monosodium salt.
81190-38-7 .....	1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfoethyl) [(tridecafluoroheptyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt.
94133-90-1 .....	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt.
117806-54-9 .....	1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt.
127133-66-8 .....	2-Propenoic acid, 2-methyl-, polymers with Bu methacrylate, lauryl methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate.
129813-71-4 .....	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl).
148240-78-2 .....	Fatty acids, C18-unsatd., trimers, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters.
148240-79-3 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl esters.
148240-80-6 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl esters.
148240-81-7 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl esters.
148240-82-8 .....	Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters.
148684-79-1 .....	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 1,6-diisocyanatohexane homopolymer and ethylene glycol.
178535-22-3 .....	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl)-, polymers with 1,1'-methylenebis[4-isocyanatobenzene] and polymethylenepolyphenylene isocyanate, 2-ethylhexyl esters, Me Et ketone oxime-blocked.
P-83-1102 .....	Fatty acids, linseed-oil, dimers, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters.
P-84-1163 .....	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatoheptyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine.



TABLE 1.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001—Continued

CAS No./PMN	Ninth Collective Index chemical name
P-84-1171 .....	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine.
P-86-0301 .....	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts.
P-89-0799 .....	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate.
P-94-0545 .....	1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate.
P-94-0927 .....	2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfon amides-blocked.
P-94-2205 .....	Polymethylenepolyphenylene isocyanate and bis(4-NCO-phenyl)methane reaction products with 2-ethyl-1-hexanol, 2-butanone, oxime, N-ethyl-N-(2-hydroxyethyl)-1-C4-C8 perfluoroalkanesulfonamide.
P-94-2206 .....	Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propyl]group-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate.
P-96-1645 .....	Fatty acids, C18-unsatd., dimers, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl esters.
P-97-0790 .....	1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1).
P-98-0251 .....	2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride.
P-98-1272 .....	2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol].
P-99-0188 .....	Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide- and stearyl alc.-blocked.
P-99-0319 .....	Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs..

TABLE 2.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003

CAS No./PMN	Ninth Collective Index chemical name
307-35-7 .....	1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
307-51-7 .....	1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafuoro-
376-14-7 .....	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester
423-50-7 .....	1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-
754-91-6 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
1652-63-7 .....	1-Propanaminium, 3-[[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide
1691-99-2 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-
1763-23-1 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
2795-39-3 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt
2991-51-7 .....	Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt
4151-50-2 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
17202-41-4 .....	1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt
24448-09-7 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-
25268-77-3 .....	2-Propenoic acid, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester
29081-56-9 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt
29117-08-6 .....	Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy-
29457-72-5 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt
31506-32-8 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-
38006-74-5 .....	1-Propanaminium, 3-[[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride
38850-58-7 .....	1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-, inner salt
67584-42-3 .....	Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt
67906-42-7 .....	1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafuoro-, ammonium salt
68298-62-4 .....	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane di-2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol
68541-80-0 .....	2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate
68555-90-8 .....	2-Propenoic acid, butyl ester, polymer with 2-[[[(heptadecafluorooctyl)sulfonyl] methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate
68586-14-1 .....	2-Propenoic acid, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[[2-methyl-1-oxo-2-propenyl]oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol

TABLE 2.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003—Continued

CAS No./PMN	Ninth Collective Index chemical name
68649-26-3 .....	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanedisulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc.
68867-60-7 .....	2-Propenoic acid, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediy)
68867-62-9 .....	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediy)
68891-96-3 .....	Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di-
68958-61-2 .....	Poly(oxy-1,2-ethanediy), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy-
70225-14-8 .....	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1)
71487-20-2 .....	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid
91081-99-1 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-, polymer with (chloromethyl)oxirane, 1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-N-methyl-1-butanedisulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-N-methyl-1-heptanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-N-methyl-1-hexanesulfonamide and 1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-N-methyl-1-pentanesulfonamide, hexanedioate (ester)
98999-57-6 .....	Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl)oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminiumchloride
182700-90-9 .....	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides
L-92-0151 .....	2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-methyl-, 2-[ethyl [(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, and 2-propenoic acid
P-80-0183 .....	Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid
P-86-0958 .....	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride
P-90-0111 .....	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl]
P-91-1419 .....	Poly(oxy-1,2-ethanediy), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(2-hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide-blocked
P-93-1444 .....	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride
P-95-0120 .....	Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediy]bis[[2-oxo-3,5-oxazolidinediy)methylene]]bis[N-methyl-
P-96-1262 .....	Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether
P-96-1424 .....	2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomers with 2-[ethyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides
P-96-1433 .....	Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethyloxidoamino)propyl], potassium salts

(2) The significant new uses are:

(i) Any manufacture or import for any use of any chemical listed in Table 1 of paragraph (a)(1) of this section on or after January 1, 2001.

(ii) Any manufacture or import for any use of any one or more of the

chemicals listed in Table 2 of paragraph (a)(1) of this section in excess of an aggregate volume for all of these chemicals of 1,100,000 pounds per person per calendar year on or after January 1, 2001 and before January 1, 2003.

(iii) Any manufacture or import for any use of any of the chemicals listed in Table 2 of paragraph (a)(1) of this section on or after January 1, 2003.

(b) [Reserved].

[FR Doc. 00-26751 Filed 10-17-00; 8:45 am]

BILLING CODE 6560-50-S

# Notices

Federal Register

Vol. 65, No. 202

Wednesday, October 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 00-029. *Applicant:* National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, MS 8221, Gaithersburg, MD 20899-8221.

*Instrument:* Vacuum Balance and Vacuum Chamber. *Manufacturer:* Metrotec Engineering ag, Switzerland. *Intended Use:* The instrument will be used for developing methods for ultra-precise vacuum mass measurement and for characterization of the stability of mass standards under vacuum. These new capabilities will play a crucial and indispensable role in the ongoing research to replace the artifact-based definition of the unit of mass with one based on fundamental constants. Application accepted by Commissioner of Customs: September 28, 2000.

*Docket Number:* 00-032 *Applicant:* The University of Michigan, Environmental Health Sciences Department, School of Public Health,

109 S. Observatory, Ann Arbor, MI 48109-2029. *Instrument:* Aerosol Generator. *Manufacturer:* Topas GmbH, Germany. *Intended Use:* The instrument is intended to be used for the generation of particulate aerosols in a small-scale wind tunnel. The aerosols, composed of dusts of different materials including glass beads, Arizona road dust, and fused alumina will be used for the study and development of personal aerosol samplers. Experiments will consist of testing the efficiency of polyurethane preselector foams and testing of personal aerosol samplers to determine aspiration efficiency. The objective of this research is to apply the knowledge gained in previous research to the development of new small-scale, user-friendly personal sampling systems for the inhalable and thoracic fractions of airborne particles. In addition, the instrument will be used for educational purposes in various environmental and industrial health courses involving laboratory research for students at various stages in the Ph.D. program. Application accepted by Commissioner of Customs: September 28, 2000.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00-26764 Filed 10-17-00; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-489-502]

#### Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe From Turkey: Amended Final Results of Countervailing Duty Administrative Reviews in Accordance With Decision Upon Remand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amendment to Final Results of Countervailing Duty Administrative Reviews in Accordance with Decision Upon Remand.

**SUMMARY:** On July 5, 2000, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) *Final Results of Redetermination on Remand Pursuant to Mannesmann-Sumebank Boru Endustrisi T.A.S. v. United States, Slip*

*Op. 00-50 (CIT May 3, 2000)*, (Slip Op. 00-74). These Final Results apply to the Department's countervailing duty administrative reviews of the countervailing duty orders on certain welded carbon steel pipe and tube and welded carbon steel line pipe from Turkey covering the period January 1, 1996 through December 31, 1996. In accordance with the CIT's instructions, the Department has recalculated the subsidy rates using a sales denominator inclusive of exchange rate gains and losses.

**EFFECTIVE DATE:** October 18, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Stephanie Moore or Michael Grossman, AD/CVD Enforcement Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-2786.

**SUPPLEMENTARY INFORMATION:** On April 16, 1998, the Department published in the **Federal Register** (63 FR 18885) the final results and partial rescission of its administrative reviews of the countervailing duty orders on certain welded carbon steel pipe and tube and welded carbon steel line pipe from Turkey for the period January 1, 1996 through December 31, 1996. Subsequently, respondents challenged the Department's final results before the CIT regarding the Department's determination to calculate the benefits from the freight rebate program at the time of receipt, and the Department's methodology of excluding foreign exchange gains, "kur farki," from the denominator of the subsidy equation.

In the 1996 administrative reviews of the countervailing duty orders, the Department determined that benefits from the freight rebate program are bestowed at the time of receipt. The Department also determined that foreign exchange gains should be excluded from the sales denominators because foreign exchange gains are not income that is derived from sales, but income from fluctuations of the relative value of the dollar versus the Turkish Lira. Therefore, the Department excluded foreign exchange gains from the sales denominators.

On December 23, 1999, the CIT affirmed the Department's determination regarding the freight rebate program. However, the CIT remanded to the Department to either

include foreign exchange gains in the denominator of the subsidy margin calculation or provide an adequate explanation of how this case differs from prior determinations, where the subsidy margin calculation was performed in this manner. The CIT also stated that if the Department took the latter course of action, it must also explain why Turkish generally accepted accounting principles (GAAP) and respondents' accounting methods are unreliable and distortive. See *Mannesmann-Sumnerbank Boru Endustrisi T.A.S. v. United States*, 86 F. Supp. 2d 1266, 1275 (CIT 1999). In accordance with that remand order, on March 17, 2000, the Department submitted its first *Final Results of Redetermination on Remand*, which explained how the prior determinations cited by the court reflected a practice no longer ascribed to by the Department, and why Turkish GAAP and the respondents' accounting methods are irrelevant in regards to the issue at hand.

The CIT, in its May 3, 2000, decision found that the Department's explanation failed to substantiate its practice or its reasonableness, and remanded to the Department to recalculate the subsidy rates using a sales denominator inclusive of exchange rate gains and losses. (Slip Op. 00-50). On June 2, 2000, the Department recalculated the subsidy rates using a sales denominator inclusive of exchange rate gains and losses, as instructed by the CIT. On July 5, 2000, the CIT sustained the Department's second *Final Results of Redetermination on Remand*. (Slip Op. 00-74).

#### Results of Remand

In accordance with the court's second remand instructions, the Department has recalculated the benefits under each program, and the company-specific total *ad valorem* rates for the 1996 period. Therefore, we are amending the final results of administrative reviews.

The final countervailing duty rates for the 1996 period of review are as follows:

Manufacturer/exporter of line pipe	Ad valorem rate
Mannesmann-Sumnerbank .....	3.75%
Manufacturer/exporter of pipe and tube	Ad valorem rate
Borusan Group .....	2.85%

The Department will instruct the Customs Service to assess countervailing duties on all appropriate entries. The Department will issue

liquidation instructions directly to the Customs Service. The above rates will not affect the cash deposit requirements for pipe and tube currently in effect, which will continue to be based on the rates found to exist in the most recently completed review. The order on line pipe was revoked effective January 1, 2000, pursuant to section 751(c) of the Tariff Act, as amended. See *Notice of Final Results of Sunset Review and Revocation of Countervailing Duty Order: Welded Carbon Steel Line Pipe from Turkey*, 64 FR 30305 (June 7, 1999).

This amendment to the final results of countervailing duty administrative reviews notice is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675 (a)(1)), 19 CFR 351.213, and 19 CFR 351.221(b)(5).

Dated: October 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-26763 Filed 10-17-00; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### **TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2001 Mental Health Rate Updates**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of updated mental health per diem rates.

**SUMMARY:** This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2001 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2001.

**EFFECTIVE DATE:** The fiscal year 2001 rates contained in this notice are effective for services occurring on or after October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stan Regensberg, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676-3742.

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set

forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35-400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2001, Medicare has recommended a rate of increase of 3.4 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2001 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2000 updated by 3.4 percent for FY 2001. Partial hospitalization rates for full day and half day programs will also be updated by 3.4 percent for FY 2001. The cap amount for high volume hospitals and units will also be updated by the 3.4 percent for FY 2001. The beneficiary cost-share for low volume hospitals and units will also be updated by the 3.4 percent for FY 2001. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment will be updated to 71.553 percent for FY 2001. The following reflect an update of 3.4 percent.

#### **REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME**

United States census region	Rate@
<b>Northeast:</b>	
New England .....	\$560
Mid-Atlantic .....	537
<b>Midwest:</b>	
East North Central .....	464
West North Central .....	438
<b>South:</b>	
South Atlantic .....	554
East South Central .....	599
West South Central .....	505
<b>West:</b>	
Mountain .....	504
Pacific .....	594
@Wage portion of the rate, subject to the area wage adjustment .....	71.553 percent

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of \$149 per day or 25 percent of the hospital billed

charges effective for services rendered on or after October 1, 2000.  
Cap Amount: Updated cap amount for hospitals and units with high

TRICARE volume is \$702 per day for FY 2001.

The following reflect an update of 3.4 percent for FY 2001.

#### PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2001

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
<b>Northeast:</b>		
New England (ME, NH, VT, MA, RI, CT) .....	\$225	\$169
Mid-Atlantic (NY, NJ, PA) .....	242	182
<b>Midwest:</b>		
East North Central (OH, IN, IL, MI, WI) .....	213	160
West North Central (MN, IA, MO, ND, SD, NE, KS) .....	213	160
<b>South:</b>		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL) .....	231	173
East South Central (KY, TN, AL, MS) .....	249	187
West South Central (AR, LA, TX, OK) .....	249	187
<b>West:</b>		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV) .....	252	189
Pacific (WA, OR, CA, AK, HI) .....	246	185

The above rates are effective for services rendered on or after October 1, 2000.

Dated: October 12, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense*

[FR Doc. 00–26677 Filed 10–17–00; 8:45 am]

**BILLING CODE 5001–10–P**

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### DoD Dependent Schools; Eligibility Requirements

**AGENCY:** DoD, DoDDS.

**ACTION:** Notice.

On September 8, 2000, the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)), signed a memorandum to the Interim Director, Department of Defense Education Activity (DoDEA), changing DoD Directive 1342.12 “Eligibility Requirements for Education of Minor Dependents in Overseas Areas,” dated July 8, 1982.

The change designates for enrollment on a space-available, tuition-free basis the class of dependents of NATO forces assigned to the NATO site at Larissa, Greece, excluding the host nation. This class waiver will be effective for school years 2000–2001 and 2001–2002, to the extent space is available, in order to allow sufficient time for the NATO command to explore other education options. This waiver will permit the enrollment of approximately 30 dependents of NATO forces. No

Department of Defense (DoD) funds may be used to hire additional English as a Second Language instructors. Either the NATO forces or the NATO families must ensure the students are prepared for English language instruction.

##### SUPPLEMENTARY INFORMATION:

DoD Directive 1342.13, “Eligibility Requirements for Education of Minor Dependents in Overseas Areas,” dated July 2, 1982, is published at 32 CFR Pt. 71, and copies are available at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, or the DoDEA web site: [www.odedodea.edu](http://www.odedodea.edu). Questions can be addressed to DoDEA Attention: Ms. Gail Terres, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Dated: October 12, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26675 Filed 10–17–00; 8:45 am]

**BILLING CODE 5001–10–M**

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### DoD Dependent Schools; Eligibility Requirements

**AGENCY:** DoD, DoDDS.

**ACTION:** Notice.

On August 17, 2000, the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)), signed a memorandum to change Department of Defense (DoD) Directive 1342.13,

“Eligibility Requirements for Education of Minor Dependents in Overseas Areas,” dated July 8, 1982. The change provides financial assistance for the education of certain Defense dependents overseas in areas in which the Department of Defense Dependents Schools (DoDDS) does not operate a school. Sponsors must obtain approval for the allowance from the cognizant DoDDS approval authority prior to incurring any expense, with the amount of the educational allowance normally not to exceed the “at post” rate authorized by the Department of State Standardized Regulations (DSSR) (Government Civilians in Foreign Areas), Sections 031.1 and 277.1, for the overseas location to which the DoD sponsor is assigned. No allowance will be provided to defray the educational expenses of dependents of eligible sponsors stationed in overseas areas where local, tax-supported schools provide an educational program in the English language. In such instances, sponsors are expected either to send their dependents to local public schools or to be personally responsible for their private school tuition. The only exception to this policy will be for those dependents whose DoD sponsors are either assigned to a Department of State Activity or independently assigned as an exchange officer to a host nation program. In these cases, the DoD sponsor will be afforded the same educational allowance provided to Department of State employees, or to members of the host nation program to which the DoD sponsor is assigned or attached, up to the published DSSR rate.

**SUPPLEMENTARY INFORMATION:**

DoD Directive 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Areas," dated July 2, 1982, is published at 32 CFR part 71 and copies are available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or the Department of Defense Education Activity (DoDEA) web site: [www.odedodea.edu](http://www.odedodea.edu). Questions can be addressed to the Department of Defense Education Activity, Attention: Ms. Gail Terres, 4040 North Fairfax Drive, Arlington, VA 22203-1635.

Dated: October 12, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00-26676 Filed 10-17-00; 8:45 am]

**BILLING CODE 5001-10-M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Proposed Collection, Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Junior Reserve Officer Training Corps (AFJROTC), Operations Section, announces the proposed renewal of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 18, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to AFROTC/DOJ, 551 East Maxwell Blvd, Maxwell AFB, AL 36112-6106.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call AFROTC/DOJO at (334) 953-5116.

**Title, Associated Form, and OMB Number:** Application for Establishment of Air Force Junior ROTC Unit, AFOATS Form 59, OMB Number 0701-0114.

**Needs and Uses:** The information collection requirement is necessary to obtain information about schools which would like to host an Air Force Junior ROTC unit.

**Affected Public:** Schools which desire to establish an Air Force Junior ROTC unit.

**Annual Burden Hours:** 20.

**Number of Respondents:** 40.

**Average Burden Per Respondent:** 30 Minutes.

**Frequency:** One time.

#### SUPPLEMENTARY INFORMATION:

##### *Summary of Information Collection:*

Respondents are high school officials who provide information about their school which is interested in hosting an Air Force JROTC unit. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit. If the form is not included in the file, a school cannot be offered the opportunity to host an AFJROTC unit.

**Janet A. Long,**

*Federal Register Air Force Liaison Officer.*

[FR Doc. 00-26753 Filed 10-17-00; 8:45 am]

**BILLING CODE 5001-05-U**

## DEPARTMENT OF ENERGY

#### Notice of Solicitation for Financial Assistance Number DE-PS03-01SF22221 and Program Announcement LAB NE-2001-1 Under the Nuclear Energy Research Initiative (NERI)

**AGENCY:** Office of Nuclear Energy, Science and Technology, Oakland Operations Office, Department of Energy (DOE).

**SUMMARY:** The U. S. Department of Energy, Oakland Operations Office intends to issue a Solicitation and a Program Announcement on or about October 17, 2000, seeking applications/proposals for innovative scientific and engineering research and development in the field of nuclear energy as part of the Nuclear Energy Research Initiative (NERI). NERI is designed to support innovative research that can address the principal technical and scientific obstacles to future use of nuclear power in the U.S. NERI is also intended to reinvigorate the vital nuclear scientific

and engineering infrastructure within U.S. universities, industry and DOE national laboratories.

The Solicitation will invite financial assistance applications from universities or other institutions of higher learning, industry, non-profit and R&D organizations and collaborations among organizations, including those in which DOE national laboratories are participating, but not as the lead organization. The Program Announcement will be issued simultaneously for applications in which a DOE national laboratory is the sole or lead performing organization.

The fields of research include: (1) Generation IV Nuclear Energy Systems; (2) Proliferation Resistant Reactors and Fuel Technology; (3) Advanced Nuclear Fuels and; (4) Fundamental Science.

Up to \$6 million of Government Fiscal Year 2001 Federal funds are expected to be available for awards under the Solicitation and the complementary Program Announcement. Typical funding of individual awards is expected to be in the range of \$200,000 to \$400,000 per year. Collaborative research projects involving two or more organizations may receive larger awards, where merited. The period of performance for individual projects is expected to be one to three years.

**SUPPLEMENTARY INFORMATION:** Funds are not presently available for these financial assistance awards. Any financial assistance awarded as a result of the Solicitation shall be contingent upon the availability of appropriated funds. No legal liability on the part of the Government for the payment of any money shall arise unless and until appropriated funds are made available to the Contracting Officer for these awards. We anticipate the receipt of funding for the Solicitation and Program Announcement under the authority of the Energy and Water Development Appropriations Act of 2001.

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.121.

The Solicitation text and Program Announcement is expected to be posted on the Oakland Operations Web Site: [http://www.oak.doe.gov/financial/sol\\_page.html](http://www.oak.doe.gov/financial/sol_page.html) on or about October 17, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Denise Berry, Contract Specialist; Financial Assistance Center, U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, 700N, Oakland, California 94612-5208; telephone (510) 637-1873.

Issued in Oakland, California, on October 11, 2000.

**Salma El-Safwany,**  
*Program Manager, Livermore Environmental  
Program Division.*

[FR Doc. 00-26731 Filed 10-17-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-43-013]

#### Anadarko Gathering Company; Notice of Refund Report

October 12, 2000.

Take notice that on May 18, 2000, Anadarko Gathering Company (AGC) tendered for filing its 1999 Kansas Ad Valorem Tax Annual Report in the above-referenced docket pursuant to the Commission's Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds, issued September 10, 1997, in Docket No. RP97-369-000, *et al.* (September 10, 1997 Order).

AGC states that the information provided in the May 1999 Annual Report has not changed in the past twelve months. Thus AGC incorporates by reference therein the May 1999 Annual Report and respectfully requests that the Commission accept its letter filing as being in compliance with the Ordering Paragraph (E) of the September 10, 1997 Order.

AGC states that copies of its filing have been provided to all parties and the Kansas Corporation Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26699 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-42-019]

#### ANR Pipeline Company; Notice of Refund Report

October 12, 2000.

Take notice that on May 18, 2000, ANR Pipeline Company (ANR) tendered for filing its refund report in the above-referenced docket pursuant to the Commission's Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds, issued September 10, 1997, in Docket No. RP97-369-000; *et al.* (September 10, 1997 Order).

ANR states that the refund report shows the principal and interest amount that producers have paid ANR, as well as the amounts owned by producers, related to Kansas ad valorem tax overpayments. In addition, ANR has provided the current, of last known, mailing address of each First Seller that has not paid its refund in full. As to the flowthrough of refunds to ANR's customers, pursuant to Commission order dated October 1, 1998, the Commission, based on a previous Commission-approved settlement agreement, granted ANR's request for a waiver of the refund flowthrough requirement and the related requirement that ANR report refund flowthroughs. As a result of this order no amounts have been flowed through to customers.

ANR states that copies of its filing have been provided to all parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26698 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-355-003]

#### Baltimore Gas and Electric Company; Notice for Extension of Waiver and Request for Expedited Consideration

October 12, 2000.

Take notice that on October 3, 2000, Baltimore Gas and Electric (BGE) tendered for filing a request to extend BGE's current "shipper must have title" policy waiver and a request for expedited consideration.

BGE requests an effective date of November 1, 2000, for the extended waiver.

BGE states that copies of the filing have been served on Columbia Gas Transmission Corporation and Dominion Transmission, Inc. (formerly CNG Transmission Corporation).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26680 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-500-001]

#### Chandeleur Pipe Line Company; Notice of Compliance Filing

October 12, 2000.

Take notice that on October 5, 2000, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective October 1, 2000. Second Revised Sheet No. 3A

Chandeleur asserts that the purpose of this filing is to comply with the

Commission's Letter order issued September 25, 2000 in Docket No. RP00-500-000.

Chandeleur states that it is correcting a pagination error in Sheet No. 3A as directed by the Commission. No content changes have been made to the Sheet No. 3A other than the pagination change as requested.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26683 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-562-000]

#### Clear Creek Storage Company, L.L.C.; Notice of Compliance Filing

October 12, 2000.

Take notice that on September 22, 2000, Clear Creek Storage Company, L.L.C. (Clear Creek) tendered for filing its explanation of why it is not feasible for Clear Creek to comply with Order No. 587-L.

Clear Creek states that since it does not impose of imbalance penalty provisions, implementation of Order No. 587-L is not necessary on its system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26684 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-325-000]

#### Colorado Interstate Gas Company; Notice of Technical Conference

October 12, 2000.

On June 15, 2000, Colorado Interstate Gas Company (CIG) filed in compliance with Order No. 637. A technical conference to discuss the various issues raised by CIG's filing was held on October 3, 2000.

Take notice that a second technical conference to discuss the issue of segmentation on CIG's system, and remaining issues raised by CIG's filing, will be held Thursday, October 26, 2000, at 9 am in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26681 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-470-000]

#### Columbia Gas Transmission Corporation; Notice of Application

October 12, 2000.

Take notice that on September 25, 2000, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030-0146, filed a request with the Commission in Docket No. CP00-470-000, pursuant to Section 7(c) of the

Commission's Regulations of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations in which Columbia requests authorization to abandon certain natural gas storage facilities, by the reclassification of two active injection storage wells to observation well status, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Specifically, Columbia seeks authority to abandon by the reclassification of two existing wells, Well Nos. 7516 and 7526, in the Terra Alta South Storage Field in Preston County, West Virginia. The wells have excessive salt water production so they will be used for observation only in the south end of the field.

Any questions regarding the application may be directed to Sue Belcher, Certificates Division, Columbia Gas Transmission Corporation, Post Office Box 1273, Charleston, West Virginia 25325-1273, telephone number (304) 357-2926.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 20, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may



submit two copies of comments to the Secretary of the Commission. Comments will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein and if the Commission, on its own review of the matter, finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear, or be represented, at the hearing.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26692 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP-440-001]

#### **Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff**

October 12, 2000.

Take notice that on October 5, 2000, Dominion Transmission, Inc. (Dominion), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets

with a proposed effective date of September 23, 2000:

Substitute Original Sheet No. 1144  
Substitute Original Sheet No. 1147  
Substitute Original Sheet No. 1148  
Substitute Original Sheet No. 1149  
Substitute Original Sheet No. 1151  
Substitute Original Sheet No. 1152  
Substitute Original Sheet No. 1153

Dominion states that the purpose of this filing is to comply with the Commission's September 6, 2000 letter order, which required Dominion to refile Section 23.2.E. of its General Terms and Conditions to exempt prearranged releases for one year or more at the maximum rate from the posting and bidding requirements. Dominion also refiles certain tariff sheets to incorporate previously accepted tariff sheets regarding the elimination of the maximum rate ceiling for short-term capacity release transactions into its newly filed FERC Gas Tariff, Third Revised Volume No. 1.

Dominion states that copies of its filing have been served upon Dominion's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26682 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-30-000]

#### **Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

October 12, 2000.

Take notice that on October 5, 2000, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, bear a proposed effective date of November 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedule CFSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26686 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL00-62-011]

**ISO New England Inc.; Notice of Filing**

October 12, 2000.

Take notice that on October 11, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted additional information relating to its September 26, 2000 filing in the above captioned docket. This supplemental information updates the voting results set forth in NEPOOL's September 26, 2000 filing.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the above captioned docket, the NEPOOL Participants, non-Participant Transmission Customers and the six New England state governors and regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
Secretary.

[FR Doc. 00-26745 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP99-324-003]

**Koch Gateway Pipeline Company; Notice of Compliance Filing**

October 12, 2000.

Take notice that on October 5, 2000, Koch Gateway Pipeline Company (Koch) filed additional information

regarding its annual cash-out report in compliance with the Commission's August 3, 2000 letter order requiring Koch to provide additional information to support the activity in the Report.

Koch states that copies of the filing have been served upon each party designated on the official service list compiled by the Secretary in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 18, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-222 for assistance).

**David P. Boergers,**  
Secretary.

[FR Doc. 00-76700 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP01-35-000]

**Norteno Pipeline Company; Notice of Tariff Compliance Filing**

October 12, 2000.

Take notice that on October 10, 2000, Norteno Pipeline Company (Norteno), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following *pro forma* tariff sheet:

Pro Forma Sheet No. 242

Norteno states that this *pro forma* tariff sheet reflects the changes to its tariff that are required to comply with the Commission's Order Nos. 637, 637-A and 637-B. Norteno has made changes to its General Terms and Conditions to provide for segmentation of capacity. As further explained in the filing, Norteno believes its current tariff provisions governing scheduling equality and flexible point rights comply with the requirements of Order No. 637. Norteno requests waiver of the requirements relating to alternate point allocations, operational flow orders, imbalance services and penalties on the

grounds that they are either not operationally feasible for Norteno or are unnecessary in order to comply with Order No. 637.

Norteno states that copies of this filing have been served on Norteno's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
Secretary.

[FR Doc. 00-26691 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP01-3-000]

**Northern Natural Gas Company; Notice of Application**

October 12, 2000.

Take notice that on October 4, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP01-3-000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder (18 CFR 157.7 and 157.18), for permission and approval to abandon in-place one (1) 2,000 horsepower compressor unit at the Sunray Compressor Station, with appurtenances, located in Moore County, Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at [www.ferc.fed.us](http://www.ferc.fed.us). Call (202) 208-2222 for assistance.

Northern states the compressor Unit #9 at its Sunray Compressor Station, proposed to be abandoned in this application, has not been in use for several years and is no longer needed because its system has undergone changes in its operating configuration since the unit was initially installed. Northern asserts that the abandonment of these facilities will not result in the abandonment of service to any of Northern's existing shippers, nor will the proposed abandonment adversely affect capacity since the compression is no longer needed to meet current firm service obligations. Northern also asserts minimal environmental impact.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398-7421, or Don Vignaroli, Regulatory Analyst, at (402) 398-7139.

Any person desiring to be heard or any person desiring to make any protest with reference to said application may, within 45 days after the issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether the public convenience and necessity require granting the Abandonment. If a protest or motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise

advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26695 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-34-000]

#### Overthrust Pipeline Company; Notice of Tariff Filing

October 12, 2000.

Take notice that on October 10, 2000, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, First Revised Sheet No. 67D, First Revised Sheet No. 67E, Original Sheet No. 67F and Original Sheet No. 67G, to be effective November 1, 2000.

Overthrust states that the purpose of this filing is to comply with Order No. 587-L issued June 30, 2000, in Docket No. RM96-1-014, which established November 1, 2000, as the implementation date for interstate pipeline companies to include, in their FERC Gas Tariff, a provision to permit shippers to net and trade imbalances.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/>

rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26690 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-40-027]

#### Panhandle Eastern Pipe Line Company; Notice of Refund Report

October 12, 2000.

Take notice that on May 18, 2000, Panhandle Eastern Pipe Line Company (PEPL) tendered for filing its 1999 Kansas Ad Valorem Tax Annual Report in the above-referenced docket pursuant to the Commission's Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds issued September 10, 1997, in Docket No. RP97-369-000, et al. (September 10, 1997 Order).

PEPL states that Appendix A to its filing contains the Kansas Ad Valorem tax refunds due from PEPL's May 18, 1999 refund report, and reflects the adjustments for additional Kansas Ad Valorem tax refunds that would result from the Commission's Order on Remand issued on April 12, 2000 in Docket No. RP97-369-013. In accordance with Ordering Paragraph (B) of the Commission's February 29, 2000 Order Accepting Refund Report in Docket No. RP98-40-22, PEPL has updated the carrying charges on the unpaid amounts in column (3) of Appendix A. The Kansas Ad Valorem Tax refund amounts due at March 31, 2000 are shown in column (4) of Appendix A. PEPL will be notifying the producer suppliers that have an adjusted refund amount resulting from the Commission's April 12, 2000 Order.

In its May 18, 1999 refund report, PEPL indicated that it has received refunds of Kansas Ad Valorem Taxes during the period April 1998 through April 1999 totaling \$125,724.51. PEPL has received no additional Kansas Ad Valorem Tax refunds from its producer suppliers during the twelve-month period April 1999 through March 2000. Pursuant to the Commission's September 10, 1997 order, PEPL will continue to accrue interest on the amounts shown in Appendix B until they are distributed to its jurisdictional customers.

PEPL states that copies of its filing have been provided to all parties and

respective State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be reviewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,  
*Secretary.*

[FR Doc. 00-26697 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-33-000]

#### Questar Pipeline Company; Notice of Tariff Filing

October 12, 2000.

Take notice that on October 10, 2000, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 79, Second Revised Sheet No. 80 and Fourth Revised Sheet No. 80A, to be effective November 1, 2000.

Questar states that the purpose of this filing is to comply with Order No. 587-L issued June 30, 2000, in Docket No. RM96-1-014, which established November 1, 2000, as the implementation date for interstate pipeline companies to include, in their FERC Gas Tariff, a provision to permit shippers to net and trade imbalances.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,  
*Secretary.*

[FR Doc. 00-26689 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-32-000]

#### TransColorado Gas Transmission Company; Notice of Tariff Filing

October 12, 2000.

Take notice that on October 10, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 246, Original Sheet No. 246A and Fifth Revised Sheet No. 247, to be effective November 1, 2000.

TransColorado states that the purpose of this filing is to comply with Order No. 587-L issued June 30, 2000, in Docket No. RM96-1-014, which established November 1, 2000, as the implementation date for interstate pipeline companies to include, in their FERC Gas Tariff, a provision to permit shippers to net and trade imbalances.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 145.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,  
*Secretary.*

[FR Doc. 00-26688 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP00-634-000 and CP97-193-004]

#### Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 12, 2000.

Take notice that on September 29, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A to the filing, with an effective date of November 1, 2000.

Transco states that the filing is being filed to adjust the initial reservation rate surcharge authorized by the Commission's Preliminary Determination on Non-Environmental Issues" issued May 30, 1997 in Docket No. CP97-193-000. The May 30 Order and Exhibit P to the application required Transco to file to adjust the surcharge effective no later than three years from the date of the last adjustment, to reflect changes in the reserve for depreciation, deferred income taxes, associated state and federal income taxes, and firm transportation billing determinants under the firm transportation service agreements between Transco and Piedmont, if Transco has not placed into effect a general change in system rates pursuant to a rate proceeding under the NGA within any three-year period during the term of the surcharge. Therefore in order to comply with the approved reservation rate surcharge methodology, Transco states that it is including in the filing an adjustment to the surcharge, as discussed above, to be effective November 1, 2000.

Transco states that copies of the filing are being mailed to each of its

SouthCoast customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26685 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-31-000]

#### USG Pipeline Company; Notice of Compliance Filing

October 12, 2000.

Take notice that on October 6, 2000, USG Pipeline Company (USGPC) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 51, with an effective date of November 1, 2000.

USGPC states that the purpose of this filing is to comply with the Commission's Order No. 587-L issued June 30, 2000 in Docket No. RM96-1-014. USGPC requests waiver of the Commission's regulations to permit the tariff sheet to become effective November 1, 2000.

USGPC states that copies of this filing are being provided to its sole customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26687 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP98-133-005, CP98-134-005, CP98-135-004]

#### Vector Pipeline, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 12, 2000.

Take notice that on September 29, 2000, Vector Pipeline L.P. (Vector), tendered for filing as its FERC Gas Tariff, Volume No. 1, to become effective November 1, 2000. Vector states that the purpose of this filing is to comply with the Commission's orders issued October 19, 1998 and May 27, 1999 in Docket Nos. CP98-133-000, et seq. and to include in its effective tariff certain new and/or modified provisions as a result of a reexamination of the 1997 pro forma tariff and discussions with its shippers. Vector requests any and all waivers of the Commission's regulations that may be required to place the proposed tariff into effect.

Vector states that its proposed tariff is in compliance with prior Commission orders, revised Commission policies, and the currently effective Commission regulations. With respect to compliance with the requirements of Order Nos. 637, et seq., Vector states that it has included in the filed tariff sheets those provisions which are permitted and/or dictated by Order Nos. 637, et seq. for immediate effect.

Vector states that the rates and charges for service under Rate Schedule FT-1 (firm transportation service) and Rate Schedule IT-1 (interruptible transportation service) are the same as those included in the certificate amendment filing made by Vector in Docket Nos. CP98-133-004 and CP98-

134-003 on June 27, 2000. The explanation for the zone rates provided in the certificate amendment filing is incorporated herein by reference. Rates for firm and interruptible service are set by zone, with Zone 1 representing service from Milepost 0 to Milepost 43, and Zone 2 representing service from Milepost 0 to Milepost 333. Also, Vector has allocated \$1 million of fixed costs to interruptible and system management services, and thus Vector plans to retain all revenues from these services.

Vector states that it proposes to recover fuel consumed in operations and lost and unaccounted for gas through contributions in-kind from the shippers, adjusted monthly for actuals, and charged on an 111-mile increment basis.

Vector states, that as mandated by Order No. 637, the price cap for short-term capacity release has been removed. In addition, Vector will issue a contract to a Replacement Shipper within one hour of awarding the capacity, however contract execution is not necessary for a Replacement Shipper to nominate volumes for transportation under its new capacity allocation.

Vector requests waiver of the requirements of Sections 284.286 and 284.287 to allow the incidental purchases and sales of gas without the need to file tariff sheets providing for such incidental purchases and sales.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26694 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-M**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. ER00-3168-002, et al.]****Conectiv Delmarva Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings**

October 12, 2000.

Take notice that the following filings have been made with the Commission:

**1. Conectiv Delmarva Generation, Inc.****[Docket No. ER00-3168-002]**

Take notice that on October 6, 2000, Conectiv, on behalf on Conectiv Delmarva Generation, Inc., tendered for filing additional rate schedule pages in compliance with the Commission's letter order dated September 12, 2000 in *Conectiv Delmarva Generation, Inc.*, Docket Nos. ER00-3168-000 and ER00-3168-001.

Conectiv has served copies of this filing to persons on the official service list in Docket Nos. ER00-3168-000 and ER00-3168-001 and the parties to the agreements affected by this filing.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. NEO Chester-Gen LLC, NEO Toledo-Gen LLC, NEO Freehold-Gen LLC****[Docket No. ER01-59-000]**

Take notice that on October 6, 2000, NEO Chester-Gen LLC, NEO Toledo-Gen LLC and NEO Freehold-Gen LLC tendered for filing under each company's market-based rate tariff a long-term service agreement with NRG Power Marketing, Inc.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Consumers Energy Company****[Docket No. ER01-60-000]**

Take notice that on October 6, 2000, Consumers Energy Company (Consumers), tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with H.Q. Energy Services (U.S.) Inc. (Customer), pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of October 4, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Entergy Services, Inc.****[Docket No. ER01-61-000]**

Take notice that on October 6, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with Duke Energy Hinds, LLC (Duke-Hinds), and a Generator Imbalance Agreement with Duke-Hinds.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Entergy Services, Inc.****[Docket No. ER01-62-000]**

Take notice that on October 6, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with LSP Pike Energy, LLC (LSP-Pike) for LSP-Pike's facility to be located near Holmesville, Mississippi, and a Generator Imbalance Agreement with LSP-Pike.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Entergy Services, Inc.****[Docket No. ER01-63-000]**

Take notice that on October 6, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with Duke Energy Attala, LLC (Duke-Attala), and a Generator Imbalance Agreement with Duke-Attala.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Constellation Power Source, Inc.****[Docket No. ER01-64-000]**

Take notice that on October 6, 2000, Constellation Power Source, Inc. (CPS), 111 Market Street, Suite 500, Baltimore, Maryland 21202 tendered for filing revisions to its market-based rate schedule, FERC Rate Schedule No. 11, providing for the resale of firm transmission rights.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Deseret Generation and Transmission Co-operative, Inc.****[Docket No. ER01-65-000]**

Take notice that on October 6, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed Confirmation Agreement for a firm power sale between Deseret and Utah Associated

Municipal Power Systems (UAMPS). This Confirmation Agreement is filed pursuant to the Western Systems Power Pool Agreement regarding a long-term power purchase and sale transaction.

Deseret requests an effective date of October 1, 2000.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Pacific Gas and Electric Company****[Docket No. ER01-66-000]**

Take notice that on October 6, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing proposed changes in its Transmission Owner Tariff (TO Tariff) and Cost Support for PG&E specific rates associated with the TO Tariff.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. PG&E provides cost support for PG&E's proposed transmission access charges. Copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

PG&E requests that its filing be made effective upon the end of the 60-day prior notice period specified in Section 35.3 (18 CFR 35.3).

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26679 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP00-422-000]

**El Paso Gas Company; Notice of Intent To Prepare an Environmental Assessment for The Proposed Line No. 2000 Project and Request For Comments on Environmental Issues**

October 12, 2000.

The staff of the Federal Energy Regulatory Commission (FERC) or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line No. 2000 Project involving acquisition, construction and operation of facilities by El Paso Natural Gas Company (El Paso) extending from a point near Ehrenberg, Arizona to McCamey, Texas.<sup>1</sup> These facilities would consist of about 785 miles of an existing crude oil transmission pipeline to be acquired by El Paso and converted to a natural gas transmission pipeline as well as certain connecting pipelines and extensions to permit the line to be contiguous and integrated into El Paso's system. El Paso would also abandon in place existing mainline compression facilities at six compressor stations, totaling 119,750 horsepower. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice El Paso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's

proceedings. It is available for viewing on the FERC Internet website ([www.ferc.fed.us](http://www.ferc.fed.us)).

**Summary of the Proposed Project**

El Paso proposes to improve the operating characteristics of its system by abandoning certain existing mainline compressor facilities on its South System and concurrently integrating into its system pipeline facilities to replace the abandoned compression. El Paso seeks authority to:

- Abandon in place five compressor stations (Deming in Luna County, New Mexico; San Simon and Benson in Cochise County, Arizona; Tucson in Pima County, Arizona; and Gila in Maricopa County, Arizona) which are presently in operation and the horsepower comprising the "A" and "B" Plants at the El Paso Compressor Station in El Paso County, Texas, all located on its South System;
- Acquire and clean approximately 785 miles of an existing crude oil transmission pipeline from its subsidiary EPNG Pipeline Company and convert it to a natural gas transmission pipeline;
- Construct a total of approximately 0.81 mile of new pipeline segments to bypass ten oil pump station sites;
- Construct new pipeline at two tie-in and four crossover locations;
- Construct a total of 2.78 miles of 30-inch-diameter pipeline to tie in Line No. 2000 to seven existing compressor stations (Guadalupe, Cornudas, Afton, Florida, Lordsburg, Casa Grande, and Wenden) on its South System and remove a total of approximately 0.68 mile of Line No. 2000 at these tie-ins;
- Replace four segments of Line No. 2000, totaling 8.16 miles, with 30-inch-diameter pipeline to meet U.S. Department of Transportation requirements;
- Install 38 new valves;
- Remove 29 plug vent valves;
- Remove seven check valve segments, fourteen gate valve segments, and a fee and gate valve and replace them with 30-inch-diameter pipeline;
- Install pigging facilities and flow measurement equipment (under section 2.55 of the Commission's regulations).

The general location of the project facilities is shown in appendix 1.<sup>2</sup>

<sup>2</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208-1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

**Land Requirements for Construction**

Construction of the proposed facilities would require about 320 acres of land. Following construction, about 3 acres would be maintained as new above-ground facility sites. The remaining 317 acres of land would be restored and allowed to revert to its former use, although some periodic vegetation maintenance may occur in some areas.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us<sup>3</sup> to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

**Currently Identified Environmental Issues**

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by El Paso. This preliminary list issues may be changed based on your comments and our analysis.

<sup>3</sup> "Us", "we", and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

<sup>1</sup> El Paso's application was filed with the Commission on July 31, 2000, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.



- Threatened and endangered species;
- Residences within 50 feet of construction work areas; and
- Public safety.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send original and two copies of your letter to:  
David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas 1, PJ-11.1;
- Reference Docket No. CP00-422-000; and
- Mail your comments so that they will be received in Washington, DC on or before November 13, 2000.

If you do not want to send comments at this time but want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor status is a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted

intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs (202) 208-0004 or on the FERC website ([www.ferc.fed.us](http://www.ferc.fed.us)) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notice, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

**David P. Boergers,**

*Secretary,*

[FR Doc. 00-26693 Filed 10-17-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Tendered For Filing With The Commission, Soliciting Additional Study Requests, and Establishing Procedures For Relicensing And A Deadline For Submission of Final Amendments

October 12, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- Type of Application:* New Minor License.
- Project No.:* 3516-008.
- Date Filed:* October 3, 2000.
- Applicant:* City of Hart, Michigan.
- Name of Project:* Hart Hydroelectric Project.
- Location:* On the South Branch of the Pentwater River, in Oceana County, near Hart, Michigan. The project does not affect federal lands.
- Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).
- Applicant Contact:* Scott Huebler, City Manager, City of Hart, 407 State

Street, Hart, Michigan, 49420, (231) 873-2488.

i. *FERC Contact:* Steve Kartalia, (202) 219-2942 or [stephen.kartalia@FERC.fed.us](mailto:stephen.kartalia@FERC.fed.us).

j. *Deadline for filing additional study requests:* December 2, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The existing Hart Hydroelectric project consists of:* (1) a 580-foot-long earthen dam; (2) a 40-foot-long concrete-lined spillway; (3) a 240-acre reservoir; (4) a powerhouse containing 2 S. Morgan Smith vertical shaft turbines and 2 generators, with a total hydraulic capacity of 135 cubic feet per second and an installed generating capacity of 320 kilowatts; (5) a 1-mile-long transmission line that connects the project with the Hart Diesel Plant; and (5) appurtenant facilities. The applicant estimates that the total average annual generation is between 350,000 and 400,000 kilowatthours. The project operates in a run-of-river mode and all generated power is distributed to customers of the City of Hart Electric Department via the City's transmission and distribution system.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2-A, Washington, D.C. 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *Michigan State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following



milestones, some of which may be combined to expedite processing:  
 Notice of application has been accepted for filing  
 Notice of NEPA Scoping (unless scoping has already occurred)  
 Notice of application is ready for environmental analysis  
 Notice of the availability of the draft NEPA document  
 Notice of the availability of the final NEPA document  
 Order issuing the Commission's decision on the application  
 Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-26696 Filed 10-17-00; 8:45 am]

**BILLING CODE 6717-01-M**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6887-2]

### Slotted Guidepoles at NSPS Subpart Ka/Kb Storage Vessels

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice concerning storage tank emission reduction partnership program.

**SUMMARY:** This notice supplements the Storage Tank Emission Reduction Partnership Program **Federal Register** notice that was published on April 13, 2000, 65 FR 19891, see also 65 FR 2391 (January 14, 2000), commends companies for their participation in this program and includes a list of these companies and their facilities. Under this program, EPA offered to enter into agreements with those companies that installed or will install controls to reduce emissions from slotted guidepoles at NSPS Subpart Ka and Kb tanks. EPA will waive penalties for participating companies who implement their agreements in a timely manner. To participate, companies were required to notify EPA of their intent to participate by June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. James K. Jackson, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone (202) 564-2002.

**SUPPLEMENTARY INFORMATION:** As described in previous **Federal Register** notices, slotted guidepoles have holes,

slots and gaps that provide a pathway for evaporative product losses and volatile organic compound (VOC) emissions which can exceed 25,000 pounds per year. EPA reaffirmed its position that uncontrolled slotted guidepoles do not comply with the "no visible gap" requirements of NSPS Subparts Ka and Kb, see 65 FR 2336 (January 14, 2000). The Storage Tank Emission Reduction Partnership Program, however, provided companies with an opportunity to resolve these issues by entering into agreements with EPA to control slotted guidepole emissions at their NSPS Subpart Ka/Kb tanks.

To participate in the Storage Tank Emission Reduction Partnership Program, companies were required to submit a notice of intent by June 12, 2000. Over 100 companies submitted notices covering over 1,000 facilities. EPA believes this level of participation reflects the obvious advantage to participating companies and to the environment of pursuing joint public-private partnerships such as this. EPA commends each of these companies for its willingness to step forward and participate in this process. Accordingly, EPA is publicizing their participation and identifying them and their facilities in this notice. **APPENDIX I.**

In announcing the final program, EPA encouraged interested companies to voluntarily install slotted guidepole controls on additional, non-NSPS Ka/Kb tanks. EPA believes that the cost of such controls is modest, the transaction cost is minimal and the opportunity for additional emission reductions is substantial. Several companies inquired whether these additional tanks and controls could be included in their participation agreement (due on or before December 11, 2000). The partnership agreement precludes the use of credits for emission reductions from tanks identified on its Annex A which, by its terms, applies only to NSPS Ka/Kb tanks. EPA recognizes that controls on these additional tanks may not be required and that emission credits and offsets would typically be available if such controls are installed. Accordingly and to avoid confusion while also providing an added incentive for installing controls on additional tanks, EPA encourages companies to identify non-NSPS Ka/Kb tanks and the controls that were or will be installed in a separate Annex B to their partnership agreement.

Annex B should be included with the partnership agreement when submitted to the Agency. It should list any non NSPS Ka/Kb tanks (e.g., tanks constructed before May 18, 1978) where

controls are or will be installed on their slotted guidepoles. Experience to date suggests that credits and offsets will be generally available under these circumstances, but identifying these tanks and installing controls does not guarantee that emission credits and offsets are available. This is an issue that must be determined by applicable state and local authorities, consistent with the requirements of federally approved state implementation plans.

Dated: October 4, 2000.

**Eric V. Schaeffer,**

*Director, Office of Regulatory Enforcement,  
 Office of Enforcement and Compliance Assurance.*

### Appendix I—Participants in the Storage Tank Emissions Reduction Partnership Program

1. AERA Energy LLC, Bakersfield, CA
  1. Belridge Field, McKittrick, CA; EPA ID No. CAD 000 628 057; Tanks T-486, T-485, T-484
  2. Beta Field, Long Beach, CA; EPA ID No. CAD 981 453 210; Tank T-1040
  3. Midway Sunset Field, Fellows, CA; EPA ID No. CAD 080 031 651, Tanks T-30ESD, T-100
2. Air Products and Chemical, Inc., Allentown, PA
3. Amerada Hess Corporation, Port Reading Refinery, Woodbridge, NJ
  1. Amerada Hess Corp.-Port Reading Refinery, EPA ID No. 15652/15034
4. American Samoa Government, Office of Petroleum Management, Pago Pago, American Samoa
  1. Utulei Bulk Petroleum Storage Tank Farm, Utulei Village; EPA ID No. ASD 981 993 306
5. Apex Oil Company, Inc., Granite City, IL
  1. Apex Oil Co, Greensboro, NC; Air Permit Facility No. 4100121
  2. Apex Oil Co., Wilmington, NC; Air Permit Facility No. 12900147
6. ARCO Products Company, West Coast Region, Richmond, CA
  1. Carson Crude Terminal, Carson, CA; EPA ID No. CAD 000 628 412
  2. Colton Terminal, Bloomington, CA; EPA ID No. CAD 000 632 406
  3. Hathaway Terminal, Long Beach, CA; EPA ID No. CAT 000 611 046
  4. Phoenix Terminal, Phoenix, AZ; EPA ID No. AZD 074 480 245
  5. Richmond Terminal, Richmond, CA; EPA ID No. CAD 000 632 521
  6. Sacramento Terminal, West Sacramento, CA; EPA ID No. CAD 062 949 938
  7. San Diego Terminal, San Diego, CA; EPA ID No. CAD 000 633 271
  8. T2 Terminal, Long Beach, CA; EPA ID No. CAD 075 332 882
  9. Vinvale Terminal, South Gate, CA; EPA ID No. CAD 081 782 583
7. ARCO Cherry Point Refinery, Blaine, WA 98231
  1. BP Amoco—Cherry Point Refinery; EPA ID No. WAD 069 548 154
8. Ashland Inc., Columbus, OH
  1. Ashland Specialty Chemical Co, Petrochemical Division, Methanol Plant,

- Plaquemine, LA; EPA ID No. LAD 081 419 418
9. BP Amoco, Carson, CA
1. BP-Amoco—Carson Refinery, Carson, CA; EPA ID No. CAD 077 227 049
10. BP Amoco Chemicals, Texas City, TX
1. Texas City Chemicals Plant; EPA ID No. TXD 005 942 438
11. BP Amoco, Mandan Refinery, Mandan, ND
1. BP-Amoco—Mandan Refinery; EPA ID No. NDD 006 175 467
12. BP Amoco, Mid-Continent Region Marketing Terminals, Wood River, IL
1. Bettendorf, IA; EPA ID No. IAD 000 688 523
  2. Boise, ID; EPA ID No. IDD 000 641 654
  3. Burley, ID; EPA ID No. IDD 000 641 662
  4. Cedar Rapids, IA; EPA ID No. IAD 000 688 515
  5. Chicago (Harlem Ave.), IL; EPA ID No. ILD 000 805 697
  6. Chicago (O'Hare), IL; EPA ID No. ILD 180 012 049
  7. Council Bluffs, IA; EPA ID No. IAD 000 688 507
  8. Des Moines, LA; EPA ID No. IAD 000 821 751
  9. Dubuque, IA; EPA ID No. IAD 000 688 556
  10. Green Bay, WI; EPA ID No. WID 000 808 246
  11. Jamestown, ND; NDD 089 776 355
  12. Milwaukee, WI; EPA ID No. WID 980 614 937
  13. Moorhead, MN; EPA ID No. MND 000 686 683
  14. Ottumwa, IA; EPA ID No. IAD 000 688 549
  15. Rochelle, IL; EPA ID No. ILD 000 717 868
  16. Roseville, MN; EPA ID No. MND 060 491 040
  17. Sauk Centre, MN; EPA ID No. MND 096 493 515
  18. Spring Valley, MN; EPA ID No. MND 000 686 691
  19. Sugar Creek, MO; EPA ID No. MOD 007 161 425
  20. Superior, WI; EPA ID No. WID 000 713 586
  21. Wood River, IL; EPA ID No. ILD 982 611 428
13. BP Exploration & Oil Inc.—Midwest Region Distribution Terminals, Cleveland, OH
1. Canton, OH; EPA ID No. OHD 017 586 3 89
  2. Cheboygan, MI; MID 000 725 242
  3. Cincinnati, OH; OHD 074 723 099
  4. Cleveland, OH OHD 000 812 198
  5. Columbus, OH; OHD 000 812 206
  6. Coraopolis, PA; PAD 000 779 959
  7. Dayton, OH; OHD 095 194 684
  8. Dearborn, MI; MID 091 611 053
  9. Granger, IN; IND 000 810 853
  10. Greensburg, PA; PAD 074 979 857
  11. Indianapolis, IN; IND 072 075 294
  12. Jackson, MI; MID 099 658 288
  13. Knoxville, TN; TND 000 504 355
  14. Lafayette, IN; IND 000 717 843
  15. Lorain, OH; OHD 000 817 767
  16. Louisville, KY; KYD 062 986 336
  17. Nashville, TN; TND 000 604 363
  18. Niles, OH; OHD 000 720 748
  19. River Rouge, MI; MID 000 809 517
  20. Sciotoville, OH; OHD 000 720 789
  21. Tiffin, OH; OHD 000 723 031
  22. Toledo, OH; OHD 000 817 171
14. BP Amoco: Amoco Pipeline Company; and PB Oil Pipeline Co., Warrenville IL
15. BP Amoco, Salt Lake City Business Unit, Salt Lake City, UT
1. Salt Lake City Refinery; UTD 000 826 362
16. BP Amoco Oil, U.S. Terminal & Distribution, Marietta, GA
1. Carteret, NJ; NJD 000 631 895
  2. Brooklyn, NY; NYD 000 632 018
  3. Curtin Bay, MD; MDD 000 607 788
  4. Fairfax, VA; VAD 040 556 565
  5. Richmond, VA; VAD 000 607 879
  6. Roanoke, VA; VAD 000 621 045
  7. Selma, NC; NCD 075 559 526
  8. Sweetwater, SC; SCD 000 645 747
  9. Doraville I, GA; GAD 079 374 260
  10. Doraville II, GA; GAD 093 381 390
  11. Mobile, AL; ALD 099 842 098
  12. Jacksonville, FL; FLD 061 916 532
  13. Tampa, FL; FLD 084 184 209
  14. Port Everglades, FL; FLD 000 827 386
17. BP Amoco Oil, Texas City Refinery Business Unit, Texas City, TX
1. Texas City Business Unit; TXD 008 080 533
18. BP Amoco—Toledo Refinery, Toledo, OH
1. Toledo Refinery; OHD 005 057 542
19. BP Amoco Oil, Whiting, IN
1. Whiting Business Unit; EPA ID No. 089-0003
20. BP Oil Company, Alliance Refinery, Belle Chasse, LA
1. Alliance Refinery; LAD 056 024 391
21. Buckeye Pipe Line Company, Allentown, Pennsylvania
1. Buckeye Pipe Line Co., Auburn; NYD 980 537 054
  2. Laurel Pipe Line Co., Booth; PAD 000 647 354
  3. Buckeye Pipe Line Co., Coraopolis; PAD 980 198 782
  4. Buckeye Pipe Line Co., East Chicago; IND 980 792 683
  5. Buckeye Pipe Line Co., Huntington; IND 980 269 344
  6. Buckeye Refining Co., Indianola Refinery; PAD 094 215 886
  7. Buckeye Pipe Line Co., Inglenook; PAO 000 144 113
  8. Buckeye Pipe Line Co., J.F.K. International Airport; NYR 000 040 297
  9. Buckeye Pipe Line Co., Lima; OHD 068 100 650
  10. Buckeye Pipe Line Co., Linden; NJD 982 189 397
  11. Buckeye Pipe Line Co., Long Island City; NYD 982 189 334
  12. Buckeye Pipe Line Co., Macungie; PAD 060 508 397
  13. Buckeye Pipe Line Co., Mantua; OHD 052 935 970
  14. Buckeye Pipe Line Co., Marcy, Marcy NY; no EPA ID No.
  15. Buckeye Pipe Line Co., Midland Breakout Facility; PAR 000 042 242
  16. Buckeye Pipe Line Co., Rochester; NYD 000 692 095
  17. Buckeye Pipe Line Co., Springfield, Springfield, MA; no EPA ID No.
  18. Buckeye Tank Terminals Co., Taylor Terminal; MIT 270 011 547
  19. Buckeye Pipe Line Co., Toledo; OHD 980 792 626
  20. Buckeye Pipe Line Co., Vestal, Vestal, NY; no EPA ID no.
  22. Calcasieu Refining Co., Lake Charles, LA
  1. Calcasieu Refining Co.; LAD 099 393 225
23. Calnev Pipe Line Company, San Bernardino, CA
1. Colton; CAD 007 907 322
  2. George; CAT 080 013 881
  3. Barstow; CAT 000 603 423
  4. Las Vegas; NVD 990 746 961
24. CENCO Refining Company, Santa Fe Springs, CA
1. Cenco Refining Company; CAD 008 383 291
25. Central Florida Pipeline Corporation, subsidiary of GATX Terminals Corporation, Tampa, FL
1. Central Florida Pipeline Co.; FLD 078 319 308
30. Chase Pipe Line Company, Wichita, Kansas
1. Aurora Terminal; COD 076 459 601
  2. El Dorado Terminal; KST 210 010 203
31. Chevron Pipe Line Company, Houston, TX
1. Alameda Station; TNRCC Account #FG0206F
  2. North Snyder Station; TNRCC Account #SG0004S
  3. Wink West Station; TNRCC Account #WM0040N
  4. Wortham Station; TNRCC Account #F10023Q
  5. Fouchon Terminal; LDEQ Permit #1560-00010-V2
  6. Empire Terminal; LDEQ Permit #2240-00048-04
  7. Boise Station; Idaho Permit #P-9506-075
  8. Sigma Station; California Permit #S-1394-53
  9. Kern Station; California Permit #S-1402-1-4
  10. Midland Station; Texas Account #ML0244C
  11. Colorado City Station; Texas Account #SG0033L
  12. Wortham Station; Texas Account #F10023Q
32. Chevron Products Company, San Ramon, CA
33. CITGO, Tulsa, OK
1. West Shore Pipeline Co, Granville Station; WID 988 579 975
  2. West Shore Pipeline Co, Des Plaines Station; ILR 000 0066 184 [sic?]
  3. West Shore Pipeline Co, North Green Bay Station; WID 988 579 967
  4. West Shore Pipeline Co, Hammond Station; IND 984 877 225
  5. West Shore Pipeline Co, Des Plaines Terminal; ILD 025 043 506
  6. West Shore Pipeline Co, Harlem Terminal; ILD 984 910 638
  7. West Shore Pipeline Co, Madison Terminal; WID 988 603 825
  8. West Shore Pipeline Co, Rockford Station; ILD 984 899 880
  9. CITGO Pipeline Co, Arlington Station; TXO 000 936 633
  10. CITGO Products Pipeline Co—Fauna Station; TXR 000 008 938
  11. CITGO Products Pipeline Co, Luling Station; TXD 000 999 490
  12. CITGO Pipeline Company, Clifton Ridge/Pecan Grove; LAD 000 803 130

13. CITGO Pipeline Company, Sour Lake Tank Farm, TXD 072 212 160
14. CITGO Albany Terminal; NYD 183 487 867
15. CITGO Baltimore Terminal; MDD 048 567 523
16. CITGO Bettendorf Terminal; IAD 000 670 455
17. CITGO Birmingham Terminal; ALD 000 609 693
18. CITGO Braintree Terminal; MAD 000 844 100
19. CITGO Brownsville Terminal; TXD 987 993 300
20. CITGO Bryan Terminal; TXT 490 011 251
21. CITGO Charlotte Terminal; MCO 006 097 19
22. CITGO Chattanooga Terminal; TND 000 609 743
23. CITGO Chesapeake Terminal; VAO 006 195 28
24. CITGO Columbus Terminal; OHT 400 010 724
25. CITGO Corpus Christi Terminal; TXD 051 161 990
26. CITGO Dayton Terminal; OHD 987 012 176
27. CITGO Des Plaines Terminal; ILD 06 609 84
28. CITGO Doraville Terminal; GAD 000 616 714
29. CITGO E. Chicago Terminal; IND 095 267 381
30. CITGO Fairfax Terminal; VAD 077 796 126
31. CITGO Ferrysburg Terminal; MID 000 718 197
32. CITGO Fort Worth Terminal; TXD 091 269 613
33. CITGO Green Bay Terminal; WID 000 713 222
34. CITGO Houston Terminal; TXD 087 611 927
35. CITGO Huntington Terminal; INT 190 014 506
36. CITGO Jackson Terminal; MID 000 718 205
37. CITGO Knoxville Terminal; TND 000 609 750
38. CITGO Lake Charles Terminal; LAD 008 080 350
39. CITGO Lemont Terminal; ILD 041 550 567
40. CITGO Linden Terminal; NJD 000 691 170
41. CITGO Louisville Terminal; KYD 043 774 975
42. CITGO Madison Terminal; WID 094 368 339
43. CITGO Meridian Terminal; MSD 000 609 701
44. CITGO Milwaukee Terminal; WID 988 592 382
45. CITGO Mt. Prospect Terminal; ILD 064 389 282
46. CITGO Nashville Terminal; TND 000 609 768
47. CITGO Niceville Terminal; FLD 032 591 521
48. CITGO Nile Terminal; MID 000 718 171
49. CITGO North Port Avenue Terminal; TXD 000 742 296
50. CITGO Panama City Terminal; FLD 984 176 073
51. CITGO Petty's Island Terminal; NJD 043 274 471
52. CITGO Port Everglades Terminal; FLD 077 266 385
53. CITGO Richmond Terminal; VAD 980 714 406
54. CITGO Rocky Hill Terminal; CTD 983 870 460
55. CITGO San Antonio Terminal; TXD 005 125 066
56. CITGO Selma Terminal; NCO 006 919 56
57. CITGO Spartanburg Terminal; SCD 000 792 671
58. CITGO Tallmadge Terminal; OHD 060 422 946
59. CITGO Tampa Terminal; FLD 069 660 561
60. CITGO Toledo Terminal; OHD 005 055 777
61. CITGO Vestal Terminal; NYD 088 658 968
62. CITGO Vicksburg Terminal; MSD 991 277 658
63. CITGO Victoria Terminal; TXD 003 899 440
64. CITGO Waco Terminal; TXD 089 318 190
65. CITGO Petroleum Corporation; LAD 008 080 350
66. CITGO Petroleum Corporation; ILD 041 550 567
67. CITGO Corpus Christi Refinery-East Plant; TXD 051 161 990
68. CITGO Corpus Christi Refinery-West Plant; TXD 981 153 711
69. CITGO Deep Sea Terminal; TXD 000 750 877
34. Coastal Eagle Point Oil Company, Westville, NJ
  1. Coastal Eagle Point Oil Company, Westville, NJ; No EPA ID No. provided
35. Coffeyville Refining, Cooperative Refining, LLC, Coffeyville, Kansas
  1. Coffeyville, KS Refinery; KSD 007 138 605
  2. Phillipsburg, KS Refinery; Source ID 1470001
  3. Associated Pipeline Assets Owned by Farmland Industries, Inc., and Operated by Cooperative Refining LLC
36. Cooperative Refining, LLC, McPherson, Kansas
  1. Cooperative Refining, LLC—McPherson; KSD 007 145 956
37. Cooperative Refining, LLC—Transportation Division, McPherson, Kansas
  1. Kane Station, Washington County, OK
  2. Spurlock Station, Chautauqua County, KS
  3. Shidler Station, Osage County, OK
  4. Waldschmidt Station, Cowley County, KS
  5. Clark Station, Butler County, KS
  6. Holtzinger Station, Trego County, KS
38. Countrymark Cooperative, Inc., Mt. Vernon, IN
  1. Countrymark Cooperative; IND 084 490 8663
43. Equilon Enterprises LLC, Bakersfield, CA
  1. Bakersfield Refining Company; CAD 099 457 087
44. Equilon Enterprises LLC, Transportation, Houston, TX
  1. Argo Terminal; ILD 000 608 992
  2. Bakersfield Terminal; CAL 000 032 796
  3. Brecksville Terminal; OHD 076 905 785
4. Carson Terminal; CAD 066 676 123
5. Cincinnati Terminal; OHD 000 609 131
6. Clermont Terminal; IND 042 361 139
7. Cleveland Terminal; OHD 000 609 149
8. Colton Terminal; CAD 982 327 744
9. Columbus East Terminal; OHD 057 806 614
10. Columbus West Terminal; OHD 079 436 077
11. Dayton Terminal; OHD 000 609 156
12. Des Plaines Terminal; ILD 068 588 664
13. Detroit Metro Terminal; MID 000 609 115
14. Detroit Terminal; MID 068 819 648
15. East Chicago Terminal; IND 094 760 444
16. Effingham Terminal; ILD 000 609 016
17. Ferrysburg Terminal;
18. Granville Terminal; WID 082 806 399
19. Greenbay Terminal; WID 023 244 429
20. Hammond Terminal; IND 053 221 537
21. Harristown Terminal; ILD 000 609 032
22. Hartford Terminal; ILR 000 076 042
23. Hilo Terminal; HID 000 631 531
24. Honolulu Terminal; HID 000 631 655
25. Jackson Terminal; MID 000 609 107
26. Kahului Terminal; HID 000 631 713
27. Lima North Terminal; OHR 000 032 383
28. Lima South Terminal; OHD 000 817 627
29. Marshall Terminal; MIR 000 045 385
30. Martinez Terminal; CAC 000 54 896
31. Mission Valley Terminal; CAD 000 603 795
32. Mitchell Field; no EPA ID No.
33. Mormon Island Terminal; CAT 000 617 480
34. Mt. Vernon Terminal; IND 980 271 829
35. Muncle Terminal; IND 000 609 073
36. Nawiiwili Terminal; HID 000 631 770
37. Niles Terminal; MID 00 609 123
38. Odessa Terminal; No EPA ID No.
39. Oklahoma City Terminal; OKD 000 728 790
40. Pekin Terminal; ILD 000 609 040
41. Peoria Terminal; ILT 180 012 692
42. Phoenix Terminal; AZD 068 411 651
43. Portland Terminal; ORD 000 641 639
44. Rialto Terminal; CAD 000 626 044
45. Rockford Terminal; ILD 000 670 901
46. Sacramento Terminal; CAD 000 631 267
47. St. Louis North Terminal; MOD 068 559 525
48. St. Louis South Terminal; MOD 042 659 714
49. San Diego Terminal; CAD 000 626 127
50. San Francisco Terminal; CAD 000 631 440
51. San Jose Terminal; CAD 000 631 382
52. Seattle Terminal; WAD 001 684 588
53. Signal Hill Terminal; CAD 028 430 999
54. Sparks Terminal; NVD 000 631 549
55. Stockton Terminal; CAD 000 631 507
56. Taylor Terminal; MIR 000 045 393
57. Toledo Terminal; OHD 000 608 901
58. Tucson Terminal; AZT 000 617 548
59. Tumwater Terminal; WAD 000 641 787
60. Van Nuys Terminal; CAT 000 603 852
61. Ventura Terminal; CAT 000 603 845
62. Wilmington Terminal; CAR 000 015 180
63. Zionville Terminal; IND 000 609 065
64. Adell Station, Decatur County, KS; No EPA ID No.

65. Aldine, Houston, TX; No EPA ID No.
66. Alzada Station (Butte), Alzada, MT; No EPA ID No.
67. Aneth Station (TMN), Montezuma, UT; No EPA ID No.
68. Avon, Concord, CA; No EPA ID No.
69. Baker Station (Butte), Baker, MT; No EPA ID No.
70. Bakersfield; CAD 981 435 506
71. Barnsely Sta (TNM), Crane, TX; No EPA ID No.
72. Baton Rouge PDX Station; LAD 000 728 881
73. Bayview Sta (TNM); No EPA ID No.
74. Beer Nose, Blackwells Corner, CA; No EPA ID No.
75. Bemis Station (KAW), Ellis County, KS; No EPA ID No.
76. Berland Station (KAW), Rooks County, KS; No EPA ID No.
77. Bistis Station (TNM), Farmington, NM; No EPA ID No.
78. Boyer Terminal; KSR 000 011 544
79. Brea; CAD 981 435 928
80. Burkett, Butler County, KS; No EPA ID No.
81. Burton, Burton, KS; No EPA ID No.
82. Carneras; CAC 001 275 448
83. Cibolo Station, TX; No EPA ID No.
84. Clay City, Clay City, IL; No EPA ID No.
85. Coalinga; CAD 000 631 176
86. Coalinga-Nose, Conlinga, CA; No EPA ID No.
87. Coates Station; No EPA ID No.
88. Cocodrie; LAD 985 221 464
89. Colex, Pasadena, TX; No EPA ID No.
90. Colorado City (Basin), Hermeligh, TX; No EPA ID No.
91. Cunningham, Cunningham, KS; No EPA ID No.
92. Cushing Terminal; OKD 980 812 721
93. Deer Park—Sinco, Deer Park, TX; No EPA ID No.
94. Delaware City, Delaware City, DE; No EPA ID No.
95. Dickinson, Butler County, KS; No EPA ID No.
96. Dopita Station (KAW), Rooks County, KS; No EPA ID No.
97. East Houston Station; TXP 490 294 484
98. El Cinco Station (TNM), McCarney, TX; No EPA ID No.
99. El Dorado Station; El Dorado, TX; No EPA ID No.
100. El Dorado Tank Farm, El Dorado, TX; No EPA ID No.
101. El Paso; TXD 043 150 317
102. El Vista (Clark), Port Arthur, TX; No EPA ID No.
103. Emido; CAD 000 631 291
104. Erath Station; LAD 985 212 471
105. Fellows, Fellows, CA; No EPA ID No.
106. Fillmore, Fillmore, CA; No EPA ID No.
107. Fishburn, Shepard, TX; No EPA ID No.
108. Flanagan, Denver City, TX; No EPA ID No.
109. Fleming Station, Harper County, KS; No EPA ID No.
110. Fredricksburg (TNM), Fredricksburg, TX; No EPA ID No.
111. Frost, Mertens, TX; No EPA ID No.
112. Fryberg Station (Ltl Mo Pl), Billings County, ND; No EPA ID No.
113. Ft. Laramie Station (Butte), Ft. Laramie, WY; No EPA ID No.
114. Garfield Station (Rancho); TXCESQ
115. Gaviota; CAD 983 670 340
116. Gibson Station; LAR 000 027 334
117. Glendive Station, Dawson County, MT; No EPA ID No.
118. Glenpool, Glenpool, OK; No EPA ID No.
119. Golden Meadow, Golden Meadow, LA; No EPA ID No.
120. Goldsmith Station (TNM), Goldsmith, TX; No EPA ID No.
121. Goodrich, Goodrich, TX; No EPA ID No.
122. Gustine; CAL 000 149 107
123. Hanston, Hodgeman Co, KS; No EPA ID No.
124. Haymark, Lake Charles, LA; No EPA ID No.
125. Hearne Products; TXCESQ
126. Hendrick, Kermit TX; No EPA ID No.
127. Hendrick (TNM), Kermit, TX; No EPA ID No.
128. Houma Station; LAD 000 983 758
129. Hudson, Hudson, KS; No EPA ID No.
130. Humble Station, Houston, TX; No EPA ID No.
131. JAL Station (Basin), Jal, NM; No EPA ID No.
132. Junction Station (TNM), Junction, TX; No EPA ID No.
133. Kalkaska, Kalkaska, MO; No EPA ID No.
134. Kelley, Mettler, CA; No EPA ID No.
135. Kettleman; CAL 000 005 401
136. Kilgore, TXD 000 825 687
137. Lake Arthur, Lake Arthur, TX; No EPA ID No.
138. Lewiston; MID 980 615 116
139. Liberty (CAPLINE), Liberty, MS; No EPA ID No.
140. Little Beaver (Butte), Fallon County, MT; No EPA ID No.
141. Lockport; ILD 000 111 000
142. Long Beach; CAL 000 015 696
143. Lyons, Lyons, KS; No EPA ID No.
144. Maistee, Manistee, MI; No EPA ID No.
145. Maricopa, Kern County, CA; No EPA ID No.
146. McCamey, McCamey, TX; No EPA ID No.
147. McCamey TF (TNM), McCamey, TX; No EPA ID No.
148. Meridan, Meridan, MS; No EPA ID No.
149. Mesa (Rancho), McCareny, TX; No EPA ID No.
150. Mesa (TNM), Roswell, NM; No EPA ID No.
151. Mid; CAD 982 032 237
152. Midland TF (Basin); TXP 490 301 063
153. Midway, McKittrick, CA; No EPA ID No.
154. Mount Belview, Mt. Belview, TX; No EPA ID No.
155. N. El Cinco Station (TNM), McCarney, TX; No EPA ID No.
156. Nairn; LAR 000 029 254
157. New Hobbs, Hobbs, NM; No EPA ID No.
158. Newhall, Newhall, CA; No EPA ID No.
159. Norco; LAD 968 012 546
160. Olig, McKittrick, CA; No EPA ID No.
161. Osage Station (Butte), Osage, WY; No EPA ID No.
162. Paducah, Paducah, KY; No EPA ID No.
163. Panoche; CAL 000 149 108
164. Pasadena (Rancho), Pasadena, TX; No EPA ID No.
165. Patoka—West; IDL 000 452 134
166. Patoka (CAPLINE); ILD 059 997 122
167. Patterson, Patterson, LA; No EPA ID No.
168. Pennel Station (Butte), Fallon County, MT; No EPA ID No.
169. Penwell Station (TNM), Penwell, TX; No EPA ID No.
170. Peotone, Bourbonnais, IL; No EPA ID No.
171. Pilottown, Buras, LA; No EPA ID No.
172. Placitas Station (TNM), Placitas, NM; No EPA ID No.
173. Plantation, Baton Rouge, LA; No EPA ID No.
174. Poplar Station, Brockton, MT; No EPA ID No.
175. Port Arthur (UNOCAL CL), Port Arthur, TX; No EPA ID No.
176. Port Neches, Port Neches, TX; No EPA ID No.
177. Pratt Lease, Longview, TX; No EPA ID No.
178. Prentice Station, Denver City, TX; No EPA ID No.
179. Pwdr Rvr Sys-Hawk Pt, WY; No EPA ID No.
180. Pwdr Rvr Sys-Heldt Draw; No EPA ID No.
181. Pwdr Rvr Sys-Reno, Johnson County, WY; No EPA ID No.
182. Ray Station (KAW), Rooks County, KS; No EPA ID No.
183. Richey Station, Dawson County MT; No EPA ID No.
184. Rio Bravo; CAL 000 173 665
185. Roth Station (KAW); No EPA ID No.
186. S. El Cinco Station (TNM); No EPA ID No.
187. Salem; ILD 984 789 099
188. San Ardo, San Ardo, CA; No EPA ID No.
189. San Ardo Orradri, San Ardo, CA; No EPA ID No.
190. Slaughter Station, Sundown, TX; No EPA ID No.
191. Somis; CAD 981 435 860
192. Sour Lake Station, Sour Lake Station, TX; No EPA ID No.
193. Southwest Pass, Venice, CA; No EPA ID No.
194. St. James (CAPLINE); LAD 982 557 449
195. Station 36, Bakersfield, Ca; No EPA ID No.
196. Sugarland, Saint James, LA; No EPA ID No.
197. Sullivan Station (KAW), Russell County, KS; No EPA ID No.
198. Sulphur, Carlysis, LA; No EPA ID No.
199. Susank Station (KAW), Susank, KS; No EPA ID No.
200. Terminal Station (KAW), Chase, KS; No EPA ID No.
201. Tex Ex, Port Arthur, TX; No EPA ID No.
202. Tracy; CAL 000 149 106
203. Tye, Abilene, TX; No EPA ID No.
204. Valley Center, Valley Center, KS; No EPA ID No.
205. Ventura Station, Ventura, CA; No EPA ID No.
206. Ventura; CAL 000 015 695

207. Walet, Loreauville, LA; No EPA ID No.
208. Wasco; CAL 000 005 093
209. Wasson Station; TXP 490 203 012
210. Wasson Station (Basin), Denver City, TX; No EPA ID No.
211. Weeks Island, Weeks Island, La; No EPA ID No.
212. West Columbia, West Columbia, TX; No EPA ID No.
213. West Odessa Station, Odessa, Tx; No EPA ID No.
214. Wheeler TF (TNM), Notrees Tx; No EPA ID No.
215. Wichita Falls; TXD 988 001 103
216. Willett, Ventura, CA; No EPA ID NO.
217. Wimberley Station (TNM), Wimberley, TX; No EPA ID No.
218. Wood River, Roxana, IL; No EPA ID No.
219. Worsham Station, Denver City, TX; No EPA ID No.
45. Equilon Enterprise LLC—Martinez Refining Company, Martinez, CA
  1. Martinez Refining Company; CAD 009 164 021
46. Equilon Enterprises LLC—Los Angeles Refining Company, Wilmington, CA
  1. Los Angeles Refining Company; CAD 041 520 644
47. Equilon Enterprises LLC—Puget Sound Refining Company, Anacortes, WA
  1. Puget Sound Refining Company; WAD 009 276 197
48. ERGON, Inc., Jackson, MS
  1. Ergon—St. James, Inc.; LAD 985 218 437
  2. Ergon, Inc.; TND 093 800 084
  3. Lion Oil Company; TND 073 528 684
49. ERGON West Virginia, Inc., Newell, WV
  1. Ergon West Virginia, Inc.; WVR 000 010 058
50. Ergon Refining, Inc., Vicksburg, MS
  1. Ergon Refining, Inc.; MSD 098 593 317
51. ExxonMobil Refining and Supply Company, Fairfax, VA
  1. Baton Rouge Refinery; LAD 062 662 887
  2. Baytown Refinery; TXD 000 782 698
  3. Beaumont Refinery; TXD 990 797 714
  4. Chalmette Refinery; LAD 008 179 707
  5. Joliet Refinery; ILD 064 403 199
  6. Torrance Refinery; CAD 008 354 052
  7. Baytown Chemical Plant; TXD 980 809 909
  8. Baton Rouge Chemical Plant; LAD 000 812 818
  9. Baton Rouge Plastics Plant; LAD 000 778 381
  10. Allentown; PAD 060 511 086
  11. Buffalo; NYD 002 107 019
  12. Cabras Island, Piti/Hagatna, Guam
  13. Chesapeake; VAD 000 731 232
  14. East Providence; RID 001 202 050
  15. Linden NJD 000 767 954
  16. Memphis; TND 000 825 497
  17. New Syracuse Ted Park; NYO 000 622 449
  18. Port Everglades; FLD 000 772 053
  19. Roanoke; VAD 000 731 240
  20. Rota Bulk Plant, Rota CNMI
  21. St. Thomas; VIR 000 000 042
  22. Saipan, Saipan, CNMI
  23. Selma; NCO 001 994 516
  24. South Houston; TXD 000 803 320
  25. Tinian Bulk Plant, Tinian CNMI
  26. Utica; NYD 000 708 008
  27. Vernon; CAD 983 616 392
52. ExxonMobil Pipeline Company, Houston, Texas
  1. ExxonMobil Pipeline Co., Webster DOW Tanks; TXR 000 015 616
  2. ExxonMobil Pipeline Co., St. James, St. James, LA; No EPA ID No.
  3. ExxonMobil Pipeline Co., Quintana; TXP 490 306 636
  4. Mobil Pipe Line Co., Malvern; PAD 981 037 989
  5. Mobil Pipe Line Co., Continental; CAT 000 623 306
  6. Mobil Pipe Line Co., Emedio; CAT 000 623 256
  7. Mobil Pipe Line Co., Lebec; CAT 000 623 314
  8. Mobil Pipe Line Co., Midway; CAT 000 623 322
53. Flying J Inc., North Salt Lake, UT
  1. North Salt Lake Flying J Refinery; UTD 045 267 127
54. Formosa Plastics Corporation, Texas, Point Comfort, TX
  1. Formosa Plastics Corporation; TXT 490 011 293
55. Frontier El Dorado Refining Company, El Dorado, Kansas
  1. Frontier El Dorado Refining Company; No EPA ID No.
56. Frontier Refining Inc., Cheyenne, Wyoming
  1. Frontier Refining Inc.; No EPA ID No.
57. Fina Oil and Chemical Company, Texas
  1. Big Springs Refinery; TXD 008 013 468
58. GATX Terminals Corporation—Philadelphia Terminal, Carteret, NJ
  1. CATX Terminal Corporation—Philadelphia Terminal; PAD 987 279 726
59. GATX Tank Storage Terminals Corp., Carson, CA
  1. Carson Facility; CAD 010 715 837
  2. Los Angeles Harbor Terminal; CAD 000 630 053
60. GATX Terminals Corporation, Carteret, NJ
  1. GATX Terminals Corporation; NJD 000 001 990
61. GATX Terminals Corporation Northwest Operations, Portland, OR
  1. GATX Terminals Corporation; WAD 000 643 080
  2. GATX Terminals Corporation; ORD 093 481 646
  3. GATX Terminals Corporation; ORD 000 643 544
62. GATX Terminals Corporation, Galena Park, TX
  1. GATX Terminals Corporation; TXR 000 001 206
63. GATX Terminals Corporation, Galena Park, TX
  1. GATX Terminals Corporation; TXD 070 137 161
64. Formosa Plastics Corporation, Point Confort, TX
  1. Formosa Plastics Corp; TXT 490 011 293
65. GATX Terminals Corporation, Philadelphia, PA
  1. GATX Paulsboro Terminal; NJD 986 574 986
66. GATX Terminals Corporation, Galena Park, TX
  1. GATX Terminals Corporation; TXD 026 481 523
67. GATX Terminals Corporation, Tampa, FL
  1. GATX Terminals Corporation; FLD 073 216 863
68. GIANT Industries, Inc., Gallup, NM
  1. Ciniza Refinery; NMD 000 333 211
  2. Bloomfield Refinery; NMD 098 416 416
  3. Albuquerque Products Terminal; NMD 045 271 053
  4. Flagstaff Fuel Distribution Facility; AZ Air Quality Control Permit No. 1000838
69. Ciniza Pipe Line, GIANT Industries, Inc., Bloomfield, NM
  1. Star Lake Station—N368 02 635' W1078 36 852'
  2. Bisti Station—N368 25.266' W1088 7.815'
  3. Apache Station—N368 21.132' W1078 27.905'
  4. Hospah Station—N358 43.958' W1078 44.852'
70. Gulf Oil, Chelsea, MA
  1. Gulf Oil; Altoona, PA; No EPA ID No.
  2. Gulf Oil; Pittston Township, PA; No EPA ID No.
  3. Gulf Oil; New Haven, CT; No EPA ID No.
  4. Gulf Oil, Williamsport, PA; No EPA ID No.
  5. Gulf Oil, Bangor, ME; No EPA ID No.
  6. Gulf Oil Whitehall, PA; No EPA ID No.
  7. Gulf Oil, Pittsburgh, PA; No EPA ID No.
  8. Gulf Oil, Thorofare, NJ; No EPA ID No.
  9. Gulf Oil, Chelsea, MA; No EPA ID No.
  10. Gulf Oil, Linden, NJ; No EPA ID No.
  11. Gulf Oil, Oceanside, NY; No EPA ID No.
  12. Gulf Oil, Delmont, P; No EPA ID No.
  13. Gulf Oil, Mechanicsburg, PA; No EPA ID No.
  14. Gulf Oil, South Portland, ME; No EPA ID No.
71. Gulf Caribbean Petroleum Refining, San Juan, Puerto Rico
  1. Caribbean Petroleum Refining, L.P., Urb. Industrial Luchetti; PRD 981 487 2267
72. Gladioux Trading & Marketing Co., L.P., Fort Wayne, IN
  1. Gladioux Trading & Marketing, Huntington, IN; No EPA ID No.
73. Hovensa L.L.C., Christiansted, Virgin Island
  1. Hovensa, LLC; VID 980 536 080
74. Hartford Wood River Terminal, Inc., Hartford, IL
  1. Hartford Wood River Terminal; #T-37—IL-3354
75. Intercontinental Terminals Company, Deer Park, TX
  1. Achorage Terminal (ACT), Port Allen, LA; No EPA ID No.
  2. Deer Park Terminal (ITC), Deer Park, TX; No EPA ID No.
76. Jayhawk Pipeline, L.L.C., McPherson, Kansas
  1. Eubanks Station, Haskell County, KS; No EPA ID No.
  2. Liberal Station, Seward County, KS; No EPA ID No.
  3. McPherson Station, McPherson County, KS; No EPA ID No.
  4. Valley Center Station, Sedgwick County, KS; No EPA ID No.
77. Kaneb Pipe Line Operating Partnership, L.P., Wichita, Kansas
  1. Dupont Products Terminal; COO 001995 497
  2. El Dorado Station; KSD 091 433 417
  3. Fountain Products Terminal; COD 048 745 657

4. McPherson Station; KSD 000 639 526
5. Mitchell Products Terminal; SDT 000 622 258
6. North Platte Products Terminal; 000 002 561 260
7. Rapid City Products Terminal; SDD 987 666 815
78. Koch Pipeline Group, L.P., Wichita, Kansas
  1. Bethany, MO Terminal—Woodriver Crude PL; MOD 985 806 876
  2. Caldwell Station, Burleson County, TX; No EPA ID No.
  3. Cisco Y, TX, Near Breckenridge, TX; No EPA ID No.
  4. Dilley Station, Dilley, TX; No EPA ID No.
  5. Gerdes Station, Gerdes, TX; No EPA ID No.
  6. Hartford, IL Terminal—Woodriver Crude PL; ILD 984 849 976
  7. Hearne Station, Hearne, Tx; No EPA ID No.
  8. Heyser II Station, Bloomington, TX; No EPA ID No.
  9. Ingleside Terminal; TXR 000 025 767
  10. North Tilden Station; TXT 490 001 0428
  11. Pettus No. 2 Station; TXD 000 725 515
  12. Rosanky Station, Rosanky, TX
  13. Rutherford Station, Tilden, TX
  14. Schaft Station, Caldwell, TX
  15. South Bend, TX, Near South Bend, TX
  16. Three Rivers Station, Simmons City Road, TX
  17. Tivoli Station; TXD 000 725 333
79. Koch Petroleum Group, LP, Wichita, KS
  1. Austin Terminal; TXR 000 035 261
  2. Corpus Christi East Refinery; TXD 066 447 376
  3. Corpus Christi West Refinery; TXD 088 474 663
  4. Cushing North, OK, Cushing, OK; No EPA ID No.
  5. Fort Worth Terminal; TXD 988 040 382
  6. Jacksonville, FL; NO EPA ID No.
  7. McFarland, WI Terminal—Wisconsin PL; WID 080 493 968
  8. Milwaukee, WI Terminal—Wisconsin PL; WID 982 071 466
  9. Pine Bend Refinery; MND 000 686 071
  10. San Antonio Terminal; TXR 000 019 018
  11. St. James, LA; LAD 981 900 541
  12. Waco Terminal; TXR 000 035 311
  13. Waupun, WI Terminal—Wisconsin PL; WID 982 605 552
  14. Wilmington, NC; NCD 000 772 046
80. Kern Oil & Refining Co., Bakersfield, CA
  1. Kern Oil & Refining Co. (Kern); No EPA ID No.
81. LBC PetroUnited Inc., Seabrook, TX
  1. Bayport Terminal; TXD 096 602 941
  2. Sunshine Terminal; LAD 096 040 712
82. Lion Oil Company—El Dorado Refinery, El Dorado, Arkansas
  1. El Dorado Refinery; ARD 000 021 998
83. Lakehead Pipe Line Company, Inc., Duluth, MN
  1. Superior Terminal; WID 981 092 133
  2. Clearbrook Terminal; MND 980 276 067
  3. Griffin Terminal; IND 074 393 422
84. Lyondell-CITGO Refining Company Ltd., Houston, TX
  1. Lyondell-CITGO Refining Company Ltd.; TXD 082 688 979
85. Marathon Ashland Petroleum LLC—Catlettsburg Refining, LLC, Catlettsburg, Kentucky
  1. Catlettsburg, Refining LLC; KYD 041 376 138
  2. Tri-state Terminal; WVD 982 575 054
86. Marathon Ashland Petroleum LLC, Findlay, OH
  1. Canton Refinery; 1576000301 (Ohio EPA)
  2. Detroit Refinery; MID 005 506 357
  3. Garyville Refinery; LAD 081 999 724
  4. St. Paul Park Refinery; MND 006 162 820
  5. Texas City Refinery; TXD 008 079 501
  6. Robinson Refinery; ILD 005 476 882
  7. Birmingham AL; ALD 000 737 296
  8. Tampa, FL; FLD 981 014 525
  9. Powder Springs, GA; GAD 000 735 910
  10. Mt. Prospect, IL; ILD 059 430 298
  11. Indianapolis, IN; IND 006 417 430
  12. Muncie, IN; IND 000 714 964
  13. Covington, KY; KYD 085 512 069
  14. Lexington, KY; KYD 024 015 877
  15. Louisville, KY; KYD 000 199 646
  16. Louisville, KY; KYD 071 316 095
  17. Garyville, LA; LAD 000 631 754
  18. Flint, MI; MID 000 724 823
  19. N. Muskegon, MI; MID 092 954 098
  20. Lebanon, OH; OHD 000 723 635
  21. Marietta, OH; OHD 063 767 024
  22. Steubenville, OH; OHD 980 902 415
  23. Youngstown, OH; OHD 064 105 943
  24. Floreffe, PA; PAD 000 731 547
  25. Floreffe, PA; PAD 000 797 555
  26. Midland, PA; PAD 000 731 547
  27. N. Charleston, SC; SCD 000 735 886
  28. Bordeaux, TX; TND 095 668 687
  29. Nashville, TN; TND 095 668 687 [sic?]
  30. Green Bay, WI; WID 054 923 925
  31. Milwaukee, WI; WID 000 821 702
  32. Kenova, WV; WVS 982 575 054
  33. Kenova, WV; WVD 982 575 054
  34. Roanoke, VA; VAD 056 907 611
87. Marathon Ashland Pipe Line LLC, Findlay, OH
  1. Section 23, T56N, R97W, Byron, WY 82412
  2. 840 Heath Road, Heath, OH
  3. 2510 Highway 20, South Worland, WY
  4. 575 Buckeye Road, Lima, OH
  5. West Highway 190, Iraan, TX
  6. 431 N. Preston Road., Pasadena, TX
  7. 9764 S. Preston Highway, Lebanon Junction, KY
  8. S. 6th Street, Wood River, IL
  9. 449 S. Fair Street, Powell, WY
  10. 922 U.S. Highway 61
  11. 1046 Pleasant Valley Road, Owensboro, KY 42302
  12. Old Rt. 40 West, Martinsville, IL
  13. 8930 Maplehurst Drive, East Sparta, OH
  14. 13100 U.S. 23, Catlettsburg, KY
  15. 1900 W. Avenue H, Griffith, IN
88. Motiva Enterprises LLC, Houston, TX
  1. Atlanta South; GAD 069 176 261
  2. Baltimore—East; MDD 044 148 856
  3. Baltimore—West; MDD 000 013 474
  4. Bridgeport; CTD 075 395 590
  5. Brooklyn; NYD 000 632 141
  6. East Hartford; CTD 046 232 633
  7. Fairfax; VAD 093 952 935
  8. Greensboro; NC1 234 567 890
  9. Long Island; NYD 002 904 076
  10. Nashville; TND 000 792 663
  11. New Haven; CTD 064 827 942
  12. Newark; NJD 065 808 875
13. Pittsburg; PAD 072 167 125
14. Providence; RID 059 741 520
15. Pt. Everglades East; FLD 000 608 182
16. Pt. Everglades South; FLD 984 173 534
17. Sewaren; NJD 002 195 220
18. South Portland; MED 086 875 382
19. Spartanburg; SCD 030 090 831
20. Springfield; VAD 000 607 986
89. Motiva Enterprises LLC, Port Arthur, TX
  1. Port Arthur Refinery; TXD 008 097 529
  2. Port Arthur Terminal; TXD 008 097 529
  3. Port Neches Terminal; TXD 980 626 022
90. Motiva Enterprises LLC, Norco, LA
  1. Norco Refinery; LAD 008 186 579
91. Murphy Oil USA, Inc., El Dorado, AR
  1. Meraux Terminal (Louisiana)
  2. Anniston Terminal (Alabama)
  3. Sheffield Terminal (Alabama)
  4. Tampa Terminal (Florida)
  5. St. Marks Terminal (Florida)
  6. Freeport Terminal (Florida)
  7. Duluth Terminal (Esso Minnesota)
  8. Meraux Refinery; LAD 008 058 471
  9. Superior Refinery; WID 006 194 336
92. National Cooperative Refinery Association, McPherson, Kansas
  1. Holtzinger Station, S35/Ti 4S/R21W, Trego County, KS; No EPA ID No.
  2. Refinery Division; KSD 007 145 956
93. Navajo Refining Company, Artesia, NM
  1. Artesia Refinery; NMD 048 918 817
  2. El Paso Eastside/PD Terminal; TXR 000 010 900
  3. Crouch Station; No EPA ID No.
  4. Brushy Draw Station; No EPA ID No.
  5. Abo Station; No EPA ID No.
  6. Barnsdale Station; No EPA ID No.
  7. Orla Station; No EPA ID No.
  8. Moore Station; No EPA ID No.
  9. Chalk Station; No EPA ID No.
  10. Forsan Station; No EPA ID No.
  11. Weems Station; TXD 095 214 497
  12. Russell Station; TXT 490 010 923
94. Olympic Pipe Line Company, Renton, WA
  1. Allen Station; WAD 000 641 746
  2. Bayview; WAD 000 008 441
  3. Portland; ORD 097 008 692
  4. Renton; WAD 000 641 753
  5. Sea-Tac; WAD 000 641 704
  6. Seattle; WAD 000 641 738
  7. Vancouver; WAD 000 641 761
95. Pennzoil-Quaker State Company—Shreveport Refinery, Shreveport, LA
  1. Shreveport Refinery; LAD 008 052 334
96. Petroleum Fuel and Terminal Company, Granite City, IL
  1. Petroleum Fuel and Terminal Company, Baltimore, MD; Air Permit No., Facility ID No. 24-01923
  2. Petroleum Fuel and Terminal Company, Memphis, TN; Air Permit No., Source No. 0376
  3. Petroleum Fuel and Terminal Company, Rensselaer, NY; DECID 438 140 0003
97. Phillips Pipe Line Company, Bartlesville, OK
  1. Borger Crude Terminal; TXD 000 742 585
  2. Kansas City Terminal; KSD 000 687 665
  3. Amarillo Terminal; TXD 000 803 585
  4. Albuquerque Terminal; NMD 000 792 986
  5. Wichita Terminal; KSD 070 904 719
  6. Paola Terminal; KSD 092 850 437
  7. E. St. Louis Terminal; ILD 053 981 601

8. Pasadena Terminal; TXD 074 157 637
9. Buckeye Station; Airs No. 35–025–0253
10. Whiteface Station; TNRCC Acct. No. CM–01223–A
11. University Station; TNRCC Acct. No. AB–0309–T
12. Palmer Station; TXD 000 742 601
98. Phillips Puerto Rico Core, Guayama, Puerto Rico
  1. Phillips Puerto Rico CORE; No EPA ID No.
99. Phillips Petroleum Company, Bartlesville, OK
  1. Woods Cross Refinery; UTD 009 090 580
  2. Borger Refinery; TXD 980 626 774
  3. Sweeny Refinery; TXD 048 210 645
100. The Premcor Refining Group, Inc., Hartford Refinery, Hartford, IL
  1. Hartford Refinery; ILD 004 441 889 023
101. The Premcor Refining Group, Lima Refinery, Lima, OH
  1. Lima Refinery; 030 202 0012
102. Plains Marketing, L.P., Cushing, OK
  1. Cushing, Lincoln County, KS; No EPA ID No.
  2. Devils Garden, Broward, FL; No EPA ID No.
  3. Floyd, Midland, TX; No EPA ID No.
  4. Glasscock, Martin, TX; No EPA ID No.
  5. Goodrich, Polk TX; No EPA ID No.
  6. Grand Chenier, Cameron, LA; No EPA ID No.
  7. Greensburg, St. Helana, LA; No EPA ID No.
  8. Greenwood, Midland, TX; No EPA ID No.
  9. Griffin, Gregg, TX; No EPA ID No.
  10. Hainsville Sour, Wood, TX; No EPA ID No.
  11. Hearne, Robertson, TX; No EPA ID No.
  12. Kangerga, Rusk, TX; No EPA ID No.
  13. Ken Cox, Martin, TX; No EPA ID No.
  14. Lagrange, Fayette, TX; No EPA ID No.
  15. Larose, La Fourche, LA; No EPA ID No.
  16. Lockhart Crossing, Livingston, LA; No EPA ID No.
  17. Mabree, Martin, TX; No EPA ID No.
  18. Monterey, Concordia, LA; No EPA ID No.
  19. Munro (Foreign C), Gregg, TX; No EPA ID No.
  20. Patterson, Reagan, TX; No EPA ID No.
  21. Porterville, Loving, TX; No EPA ID No.
  22. Powell, Glasscock, TX; No EPA ID No.
  23. Roseland, Concordia, LA; No EPA ID No.
  24. Sabine Pass, Jefferson, TX; No EPA ID No.
  25. Spraberry, Midland, TX; No EPA ID No.
  26. St. Gabriel, Iberville, LA; No EPA ID No.
  27. Stoneburg, Montague, TX; No EPA ID No.
  28. Sulphur Draw, Martin, TX; No EPA ID No.
  29. Abbeville, Vermilion, LA; No EPA ID No.
  30. Arden Jct., Irion, TX; No EPA ID No.
  31. Ball, Reagan, TX; No EPA ID No.
  32. Barker, Gregg, TX; No EPA ID No.
  33. Battleview, Burke, North Dakota; No EPA ID No.
  34. Bee Brake, Concordia, LA; No EPA ID No.
  35. Bradford, Midland, TX; No EPA ID No.
  36. Brown, Martin, TX; No EPA ID No.
  37. Charenton, St. Mary, LA; No EPA ID No.
  38. Childress, Childress, TX; No EPA ID No.
  39. Coates Ranch, Reagan, TX; No EPA ID No.
  40. Conley, Hardeman, TX; No EPA ID No.
  41. Cooks Point, Burleson, TX; No EPA ID No.
  42. Crain Ranch, Cameron, OK; No EPA ID No.
  43. Cushing, Lincoln, OK; No EPA ID No.
  44. Tippet, Upton, TX; No EPA ID No.
  45. Tuscola, Taylor, TX; No EPA ID No.
  46. Upton (Shell), Upton, TX; No EPA ID No.
  47. Wildsville, Concordia, LA; No EPA ID No.
  48. Wink, Winkler, TX; No EPA ID No.
  103. The Premcor Refining Group, Inc., Port Arthur Refinery, Port Arthur, TX
    1. Port Arthur Refinery; 482 450 0004
    2. Lucas Station; 000008954554
  104. Paramount Petroleum, Paramount, CA
    1. Paramount Petroleum Refinery; PPC ENV. File No. 2000–700.100
  105. Environmental Resources Management, Woodbury, NY
    1. RAD Energy, Oceanside, NY; 11572RDNRG7HAMP
  106. Shell Chemical Company, Houston, TX
    1. Shell Chemical Company—Deer Park Chemical Plant; 77536SHLLLHIGHW
    2. Shell Chemical Company—Geismar Chemical Plant; LAO 039 131 83
    3. Shell Chemical Company—Norco Chemical Plant; LAR 000 011 635
  107. Shell Deer Park Refining Company, Deer Park, TX
    1. Shell Deer Park Refining Company; TXD 067 285 973–1
  108. Sinclair Oil Corporation, Salt Lake City, UT
    1. Sinclair Tulsa Refinery; OKD 990 750 960
  109. ST Services, Dallas, TX
    1. Columbus, GA; GAD 991 298 860
    2. Linden, NJ; NJD 980 647 242
    3. Jacksonville, FL; FLD 121 967 152
    4. Moundville, AL; ALD 000 772 251
    5. Stockton, CA; CAT 000 617 514
    6. Texas City, TX; TXD 096 036 561
  110. SuNoco, Inc., Marcus Hook, PA
    1. SuNoco, Inc.—Philadelphia Refinery, Philadelphia, PA; No EPA ID No.
    2. SuNoco, Inc.—Marcus Hook Refinery, Marcus Hook, PA; No EPA ID No.
    3. SuNoco, Inc.—Northumberland Terminal, Northumberland, PA; No EPA ID No.
    4. Sun Pipe Line Co., St. Clair, MI; No EPA ID No.
    5. Puerto Rico Sun Oil Company, Yabucoa, PR; No EPA ID No.
    6. SoNoco, Inc. Kingston Terminal, Edwardsville, PA; No EPA ID No.
    7. Sun Pipe Line Co.—Montello Pump Station, Sinking Springs, PA; No EPA ID No.
    8. Mid Continent Pipe Line—Bristow Station, Bristow, OK, No EPA ID No.
    9. Sun Pipe Line Co.—Breckenridge Station, Snyder, TX; No EPA ID No.
    10. Sun Pipe Line Co.—Suggs Station, Snyder, TX; No EPA ID No.
    11. Sun Pipe Line Co.—Benjamin Station, Abilene, TX; No EPA ID No.
    12. Sun Pipe Line Co.—Hearn Station, Abilene, TX; No EPA ID No.
    13. Sun Pipe Line Co.—Carlsbad Station, Abilene, TX; No EPA ID No.
    14. SuNoco, Inc.—Toledo Refinery, Oregon, OH; No EPA ID No.
    15. Mid Continent Pipe Line—Little Farm Station, Cushing, OH; No EPA ID No.
    16. Sun Pipe Line Co.—Southbend Station, Snyder, TX; No EPA ID No.
    17. Sun Pipe Line Co.—Nederland Marine Terminal, Nederland, TX; No EPA ID No.
    18. Sun Pipe Line Co.—Hawley Station, Abilene, TX; No EPA ID No.
    19. Sun Pipe Line Co.—Tye Station, Abilene, TX; No EPA ID No.
    20. Sun Pipe Line Co.—Monroe Station, Abilene, TX; No EPA ID No.
    21. Sunoco, Inc.—Tulsa Refinery, Tulsa, OK; No EPA ID No.
    111. Tesoro Alaska Company, Kenai, AK
      1. Kenai Refinery; 9323–11008
      2. Anchorage Terminal No. 1; 9521–AA003
      3. Kenai Pipeline Company; AKD 035 419 795
      4. Nikiski Terminal; AKD 983 075 094
      5. Anchorage Terminal No. 2; 9521–AA007
    112. Tesoro Hawaii Corporation, Honolulu, HI
      1. Tesoro Hawaii Corporation Refinery; HID 056 786 395
      2. Tersor Hawaii Corporation Maui Terminal; HIO 000 146 365
    113. Tesoro Northwest Company, Anacortes, WA
      1. Tesoro Northwest Refinery, Anacortes, WA; No EPA ID No.
    114. Tosco Corporation, Tempe, Arizona
      1. Avon Refinery; CAD 000 072 751
      2. Bayway Refinery; NJD 986 645 984
      3. Spokane Terminal; WAD 000 641 549
      4. Coalunga Pump Station; CAD 980 585 855
      5. Torrance Tank Farm; CAT 000 625 301
      6. Ferndale Refinery; WAD 009 250 366
      7. Trainer Refinery; PAR 000 015 768
      8. Colton East Terminal; CAD 000 628 917
      9. Honolulu; HID 000 633 081
      10. Manassas Terminal; VAR 000 015 883
      11. Phoenix Terminal; AZD 070 259 767
      12. Portland Terminal; ORD 087 458 196
      13. Renton Terminal; WAS 000 641 530
      14. Riverhead Terminal; NYD 072 367 980
      15. Sacramento Terminal; CAD 009 590 118
    115. United Refining Company, Warren, PA
      1. United Refining Company Warren, PA Refinery; PAD 002 105 179
    116. Unocal Beaumont Terminal, Unocal Corporation, Nederland, TX
      1. Beaumont Terminal, Nederland, TX; TNRCC Acct. No. JE–0111–H
    117. Valero Refining Company, San Antonio, TX
      1. Corpus Christi Refinery; TXD 074 604 166
      2. Texas City Refinery; TXD 000 792 937
      3. Houston Refinery; TXD 053 624 193
      4. Krotz Springs Refinery; LAD 081 407 850
      5. Paulsboro Refinery; NJD 002 342 469 301
      6. Benicia Refinery; CAD 063 001 770
    118. Williams Alaska Petroleum, Inc., Tulsa, OK
      1. Anchorage Terminal; AKD 000 641 852
      2. North Pole Refinery; AKD 000 850 701



119. Williams Pipe Line Company, Tulsa, OK
  1. Fort Smith; ARO 000 971 663
  2. Des Moines; IAD 075 834 713
  3. Dubuque; IAD 089 981 245
  4. Fort Dodge; IAD 000 690 255
  5. Iowa City; IAT 200 010 007
  6. Mason City; IAD 000 690 289
  7. Milford; IAD 000 690 263
  8. Sioux City; IAD 000 690 271
  9. Waterloo; IAD 000 690 248
  10. Amboy; ILD 000 716 902
  11. Chicago; ILD 000 673 053
  12. Heyworth; ILD 984 811 083
  13. Menard County; ILD 152 533 790
  14. El Dorado; KST 210 010 021
  15. Filter Press; KST 210 010 153
  16. Independence; KSO 001 962 911
  17. Kansas City; KSD 030 633 911
  18. Olathe; KST 210 010 666
  19. St. Joseph; KST 210 010 005
  20. Topeka; KST 210 010 039
  21. Wichita; KSO 002 207 157
  22. Alexandria; MND 000 824 094
  23. Mankato; MND 000 685 784
  24. Marshall; MND 076 502 335
  25. Minneapolis; MND 000 685 768
  26. Rochester; MND 000 685 776
  27. Rosemount; MNO 001 440 445
  28. Carthage; NOD 084 096 130
  29. Columbia; NOD 071 958 631
  30. Mt. Vernon, MO; 7660044
  31. Palmyra; MOD 000 767 103
  32. Springfield; MOD 000 147 8619
  33. Grand Forks; NDD 986 271 385
  34. West Fargo; NDD 000 690 669
  35. Doniphan; NED 000 690 305
  36. Lincoln; NED 000 690 313
  37. Nebraska City; NED 000 690 297
  38. Omaha; NED 040 917 569
  39. Allen; OKO 001 148 188
  40. Barnsdall; 7496392
  41. Drumright; OKO 002 315 141
  42. Enid; OKD 987 083 102
  43. Glen Pool; OKD 000 829 515
  44. High Street; OKD 987 066 917
  45. Ponca City; OKO 001 579 721
  46. Reno; OKD 981 586 720
  47. Sooner Road; OKD 000 763 391
  48. Tulsa; OKD 000 821 330
  49. Sioux Falls; SDD 000 823 559
  50. Watertown; SDD 000 694 596
  51. Bateman; WID 152 525 556
  52. Wausau; WID 000 711 390
120. Williams Refining, L.L.C., Tulsa, OK
  1. Williams Refining, LLC; TND 007 026 958
  2. Williams Riverside Terminal; TND 000 615 641
  3. Williams West Memphis Terminal; ARD 083 261 22
  4. Williams Collierville Terminal; MSTMP0002012 (temporary number, expired 1998)
121. Williams Energy Ventures, Inc., Tulsa, OK
  1. Mobile; ALD 000 826 933
  2. Montgomery; ALD 000 826 941
  3. Phoenix (Caljet); AZO 001 275 67
  4. Phoenix (Seaport); AZD 983 473 174
  5. Jacksonville; FLD 055 346 134
  6. Albany; GAD 000 616 557
  7. Doraville; GAD 000 649 137
  8. Augusta; KSD 985 006 154
  9. Marrero; LAO 002 205 599
  10. St. Charles; MOD 000 767 11
  11. Meridian; MSD 000 826 883

12. Greensboro (Sofac); NCD 000 616 581
13. Charlotte (Sofac); NCD 000 616 599
14. Selma; NCD 000 616 607
15. Charlotte (Amoco); NCD 000 826 909
16. Greensboro (Amoco); NCD 071 562 656
17. Aurora; OHF 000 723 957
18. North Augusta (Sofac); SCD 000 616 615
19. Spartanburg; SCD 086 364 841
20. North Augusta (Amoco); SCD 987 579 364
21. Nashville (Sofac); TND 000 616 649
22. Chattanooga; TND 000 825 182
23. Nashville (Amoco); TND 000 826 859
24. Nashville (Mar-Ash); TND 000 829 143
25. Knoxville; TND 074 904 053
26. Dallas; TXD 000 741 900
27. Galena Park; TXD 002 524 874
28. Corpus Christi; TXD 091 698 951
29. Montvale; VAD 000 776 203
30. Richmond; VAD 058 900 036
122. Wynnewood Refining Company, Wynnewood, OK
  1. Wynnewood Refining Company; OKD 000 396 549

[FR Doc. 00-26749 Filed 10-17-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00685; FRL-6751-4]

### State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations & Management; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations & Management will hold a 2-day meeting, beginning on November 2, 2000, and ending on November 3, 2000. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on Thursday, November 2, 2000 from 8:30 a.m. to 5 p.m. to Friday, November 3, 2000, from 8:30 a.m. to 12:00 noon.

**ADDRESSES:** The meeting will be held at The Doubletree Hotel, 300 Army Navy Drive, Arlington - Crystal City, VA.

#### FOR FURTHER INFORMATION CONTACT:

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843-1249; telephone number: (802) 472-6956; fax: (802) 472-6957; e-mail address: aapco@plainfield.bypass.com or, Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460;

telephone number: (703) 605-0195; fax number: (703) 308-1850; e-mail address: McDuffie.Georgia@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Does this Action Apply to Me?

*This action is directed to the public in general.* This action may, however, be of interest to all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843-1239.

##### III. Tentative Agenda:

Antimicrobial issues, including master label policy, permitted and unacceptable label.

Language, HVAC products, Efficacy testing program, and others.

eCommerce issues.

Phosphine risk mitigation/Improved labeling.

Inspector credentialing/Authorization procedures.

Worker protection standard update.

Field data plan workgroup/Update.

Herbicides used for seed production.

Mosquito control products; Labeling issues.

"Professional Use Only" Type label statements.

Supplemental labeling.

Endangered species protection issues.



Updates from Office of Pesticide Programs and Office of Enforcement and Compliance Monitoring.

#### List of Subjects

Environmental protection.

Dated: October 11, 2000.

**Ken Garvey,**

*Acting Director, Field and External Affairs Division, Office of Pesticide Programs.*

[FR Doc. 00-26639 Filed 10-17-00; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00682; FRL-6750-7]

### Notice of Availability of Pesticide Data Submitters List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

**FOR FURTHER INFORMATION CONTACT:** By mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6426; e-mail: jamula.john@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *By mail:* Microfiche copies of the document are available from the National Technical Information Service (NTIS) ATTN: orderDesk, 5285 Port Royal Road, Springfield, VA 22161.

Telephone: 1-800-553-6847. When requesting a document from NTIS, please provide its name and NTIS Publication Number (PB). The NTIS Publication for this version of the Pesticide Data Submitters List is PB 2000-102113.

2. *Electronically:* The Pesticide Data Submitters List is available of EPA's worldwide web site on the Internet. The Internet address of EPA's web site is [www.epa.gov](http://www.epa.gov). The Pesticide Data Submitters list may be found by searching for the keywords "datasubmitterslist" from this page, or may be accessed directly on the EPA web site, by going directly to the address listed below. Note that this address is case sensitive: <http://www.epa.gov/opppmsd1/DataSubmittersList/index.html>

#### II. What Action is the Agency Taking?

The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpart E regarding ownership of data used to support registration. This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

#### List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 10, 2000.

**Richard D. Schmitt,**

*Associate Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc 00-26752 Filed 10-17-00; 8:45 a.m.]

**BILLING CODE 6560-50-S**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime

Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 000086-019.

*Title:* New York Shipping Association, Inc. and International Longshoremen's Association, AFL-CIO Assessment Agreement

*Parties:* New York Shipping Association, Inc. International Longshoremen's Association.

*Synopsis:* The agreement amendment amends pension base calculations and provides for the extension of the agreement through September 30, 2004.

*Agreement No.:* 010806-005.

*Title:* Portland SSA Terminal 2 Marine Terminal Agreement.

*Parties:* The Port of Portland, Stevedoring Services of America, Inc.

*Synopsis:* The agreement amendment sets a management fee and a minimum annual guarantee and extends the agreement through September 30, 2005.

*Agreement No.:* 011699-001.

*Title:* CMA CGM/Wan Hai Lines Ltd. Cooperation Agreement.

*Parties:* CMA CGM, S.A., Wan Hai Lines Ltd.

*Synopsis:* Under the proposed modification, some of the space CMA CGM provides Wan Hai lines in the transpacific trades will now come from the space that CMA CGM receives from Maersk Sealand under the Maersk Sealand/CMA CGM Pacific Slot Charter Agreement, FMC Agreement No. 011724. The parties request expedited review.

*Agreement No.:* 200063-020.

*Title:* New York Shipping Association, Inc. and International Longshoremen's Association, AFL-CIO Assessment Agreement.

*Parties:* New York Shipping Association, Inc., International Longshoremen's Association.

*Synopsis:* The agreement amendment amends pension base calculations and provides for the extension of the agreement through September 30, 2004.

Dated: October 13, 2000.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 00-26778 Filed 10-17-00; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary

licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

*License Number:* 2696N.

*Name:* Burnham Service Company, Inc.

*Address:* P.O. Box 7966, Columbus, GA 31829

*Date Revoked:* September 22, 2000.

*Reason:* Failed to maintain a valid bond.

*License Number:* 0916F.

*Name:* J.D. Smith Co., Inc.

*Address:* Brooklyn Navy Yard, Building #3, 11th Floor, Brooklyn, NY 11205.

*Date Revoked:* September 18, 2000.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00-26777 Filed 10-17-00; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

#### *Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:*

Worldwide Shipping Corporation, 1641 W. Main Street, Suite 420, Alhambra, CA 91801. Officer: Willie Y. Wu, President, (Qualifying Individual)

BGI Worldwide Logistics, Inc., 1850 Redondo Ave., #106, Long Beach, CA 90804. Officers: Gabriel Shweiri, President, (Qualifying Individual); Bruce Robertson, Vice President

Eternity International LLC, 704-4 Las Tunas Drive, Suite 113, San Gabriel, CA 91776-1162. Officer: Sheng Chiang, President, (Qualifying Individual)

Comax Worldwide Inc., 147-25 176th Street,

Jamaica, NY 11434. Officers: Terence Tsang, President, (Qualifying Individual); Anthony Lo, Vice President  
TOP Container Line Inc., 3605 Long Beach Blvd., Suite 321, Long Beach, CA 90807. Officers: Takayoshi Todoroki, Secretary, (Qualifying Individual); Hirofumi Nishimura, President

#### *Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:*

Incopro Corporation, 12800 Aldine Westfield Road, Suite 210, Houston, TX 77039. Officers: Francisco Antonio Gruzman, Jr., (Qualifying Individual); Jerry De Foor, Secretary.

#### *Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:*

Asian Logistics, Inc., 2079 S. Atlantic Blvd., #D, Monterey Park, CA 91754. Officers: Teddy Li, Vice President, (Qualifying Individual); Yuen-Ping Li, President

Dated: October 13, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00-26779 Filed 10-17-00; 8:45 am]

**BILLING CODE 6730-10-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 2000.

**A. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Thomas James Reynolds and Lois Jane Reynolds, Mankato, Minnesota; to acquire voting shares of Northern Star Financial, Inc., Mankato, Minnesota, and thereby indirectly acquire voting

shares of Northern Star Bank, Mankato, Minnesota.

Board of Governors of the Federal Reserve System, October 12, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-26673 Filed 10-17-00; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2000.

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *NebraskaLand Financial Services, Inc.*, North Platte, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of NebraskaLand National Bank, North Platte, Nebraska.

In connection with this application, First York Bancorp, York, Nebraska, has

applied to acquire 60 percent of the voting shares of NebraskaLand Financial Services, Inc., North Platte, Nebraska.

2. *First Olathe Bancshares, Inc.*, Kansas City, Missouri; to control Bannister Bank & Trust Company, Kansas City, Missouri, through a management consulting agreement.

Board of Governors of the Federal Reserve System, October 12, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-26672 Filed 10-17-00; 8:45 am]

BILLING CODE 6210-01-P

## GENERAL SERVICES ADMINISTRATION

### Great Lakes Region 5; Intent To Prepare an Environmental Impact Statement for the Disposal and Potential Reuse of Badger Army Ammunition Plant (BAAP) in Baraboo, Wisconsin

**AGENCY:** U.S. General Services Administration, Great Lakes Region 5.

**ACTION:** Notice of intent (NOI) to prepare an Environmental Impact Statement (EIS), and to conduct public scoping.

**SUMMARY:** The U.S. General Services (GSA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential effects of disposal and potential reuse alternatives of the Badger Army Ammunition Plant (BAAP) in Baraboo, Wisconsin. To ensure that all significant issues related to the proposed action are identified, the GSA will conduct a public scoping meeting.

**ADDRESSES:** Comments may be mailed or delivered to the GSA at the following address: Mr. William Costa, GSA Property Disposal Division, 10 Causeway Street, Boston, MA 02222-1077.

**FOR FURTHER INFORMATION CONTACT:** U.S. General Services Administration: Mr. William Costa, (617) 565-5696 or The Louis Berger Group, Inc.: Mr. Jess Commerford, (202) 331-7775.

**SUPPLEMENTARY INFORMATION:** The GSA will prepare an EIS on disposal of the Badger Army Ammunition Plant and potential reuse alternatives. BAAP covers approximately 7,354 acres in Sauk County, approximately 6 miles south of Baraboo and approximately 30 miles northwest of Madison, Wisconsin. The Sauk County Board of Supervisors has established the Badger Army Ammunition Plant Reuse Committee to develop proposed reuse scenarios for the property. The EIS will address reuse

issues developed by the Reuse Committee, which will conclude its work in March 2001. The environmental review of the disposal and potential reuse alternatives will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, *et seq.*), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), U.S. General Services Administration regulations (PBS P 1095.4 B), and all applicable Federal, state, and local government laws, regulations, and policies.

### Public Scoping Meeting

The GSA will solicit public comments for consideration and possible incorporation in the Draft EIS through public scoping, including a scoping meeting, on the proposed action. To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified early in the process, comments and suggestions are invited from all interested and/or potentially affected parties. These individuals or groups are invited to attend the public scoping. The meeting location and time will be publicized in local newspapers and elsewhere. Written comments will be accepted throughout this process and can be forwarded to the address provided above.

Dated: October 11, 2000.

**William Costa,**

*Property Disposal Division, General Services Administration.*

[FR Doc. 00-26746 Filed 10-17-00; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Advisory Committee on Blood Safety and Availability

**AGENCY:** Office of the Secretary.

**ACTION:** Notice of Meeting.

The Advisory Committee on Blood Safety and Availability will meet on Thursday, January 25, 2001 and Friday, January 26, 2001, from 8:00 a.m. to 5:00 p.m.. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The Advisory Committee will consider how the government should respond to the current public debate over universal leukoreduction.

Public comment will be solicited at the meeting. Public comment will be

limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 11, 2001.

### FOR FURTHER INFORMATION CONTACT:

Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 200 Independence Avenue, S.W., Rm 736E, Washington, D.C. 20201. Phone (202) 690-5560 FAX (202) 690-7560 e-mail

StephenDNightingale@osophs.dhhs.gov.

Dated: October 6, 2000.

**Stephen D. Nightingale,**

*Executive Secretary, Advisory Committee on Blood Safety and Availability.*

[FR Doc. 00-26739 Filed 10-17-00; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

### Administration on Aging

### Announcement of Fiscal Year 2000 Sole Source Awards

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Announcement of sole source awards made by the Administration on Aging in fiscal year (FY) 2000 under the authority of Title IV of the Older Americans Act (42 U.S.C. 3001 *et seq.*).

**SUMMARY:** The Administration on Aging announces that it has made twenty-eight (28) new sole source awards in FY 2000 as follows: National Indian Council on Aging (NM), \$130,000, March 1, 2000 to February 28, 2003; National Asian Pacific Center on Aging (WA), \$260,000, March 1, 2000 to February 28, 2003; Asociacion National Pro Personas Mayores (CA), \$150,000, September 1, 2000 to August 31, 2003; National Caucus and Center on Black Aged (DC), \$150,000, September 1, 2000 to August 31, 2003; National Hispanic Council on Aging (DC), \$150,000, September 1, 2000 to August 31, 2003; National Association of Home Builders Research Center, Inc. (MD), \$553,285, April 1, 2000 to March 31, 2001; Christmas in April USA (DC), \$322,756, June 1, 2000 to May 31, 2001; Albert Einstein Medical Center (PA), \$920,000, September 30, 2000 to February 28, 2002; West Virginia University (WV), \$460,000, May 1, 2000 to April 30, 2001; Community Programs of Long Island, Inc. (NY), \$461,080, May 1, 2000 to July 31, 2001; Nevada Rural Counties RSVP

Program (NV), \$92,216, September 1, 2000 to August 31, 2001; University of Colorado Health Science Center (CO), \$327,364, September 29, 2000 to September 28, 2003; University of North Dakota (ND), \$327,365, September 1, 2000 to August 31, 2003; Metropolitan Family Services (IL), \$250,000, September 30, 2000 to September 29, 2001; Santa Clara Indian Pueblo (NM), \$461,000, September 1, 2000 to August 31, 2001; City of Norwalk (CA), \$36,886, September 30, 2000 to September 29, 2001; Elderly Services Inc. (VT), \$783,836, September 30, 2000 to March 30, 2002; VNA Home Health, Inc. (WI), \$89,575, September 1, 2000 to August 31, 2001; City of Norwalk (CA), \$36,886, September 30, 2000 to September 29, 2001; Pension Rights Center (DC), \$187,500, April 1, 2000 to March 30, 2003; Legal Services for the Elderly (NY), \$75,000, March 1, 2000 to February 28, 2003; California Advocates for Nursing Home Reform (CA), \$75,000, March 1, 2000 to February 28, 2003; Older Womens League, Inc. (DC), \$74,919, May 1, 2000 to April 30, 2003; Pima Council on Aging (AZ), \$75,000, May 1, 2000 to April 30, 2003; Chicago Department on Aging (IL), \$74,353, September 30, 2000 to September 29, 2003; University of Alabama (AL), \$74,928, September 30, 2000 to September 29, 2003; Oregon Health Sciences University (OR), \$922,160, August 1, 2000 to January 31, 2002; and Texas Tech University Health Sciences Center School of Medicine (TX), \$1,857,786, August 1, 2000 to July 31, 2001.

All awards were made consistent with the terms of Senate Report 106-166 and House Report 106-370 which accompany the Consolidated Appropriations Act for FY 2000 (Pub. L. 106-113).

**FOR FURTHER INFORMATION CONTACT:** Edwin L. Walker, 202-619-1828.

Dated: October 10, 2000.

**Jeanette C. Takamura,**

*Assistant Secretary for Aging.*

[FR Doc. 00-26734 Filed 10-17-00; 8:45 am]

**BILLING CODE 4154-01-U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 96M-0311]

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Submit written comments on the collection of information by November 17, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezuto, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### PHS Guideline on Infectious Disease Issues in Xenotransplantation

The statutory authority to collect this information is provided under sections 351 and 361 of the PHS Act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 301 *et seq.*). This PHS guideline is revised based on public comment to a previous document entitled "Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996)," which published in the **Federal Register** of September 23, 1996 (61 FR 49919). The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and the general public. The PHS guideline is intended to address

public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance to sponsors in: (1) The development of xenotransplantation clinical protocols, (2) the preparation of submissions to FDA, and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The PHS guideline also describes public health needs for: (1) A pilot national xenotransplant data base, which is currently under development by PHS; (2) a central PHS biologic specimen archive; and (3) the Secretary's Advisory Committee on Xenotransplantation, which is being developed and implemented by the Department of Health and Human Services. These public health programs and this PHS guideline are intended to protect the public health and help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (IND's) and xenotransplantation product procurement centers, referred to as source animal facilities. Currently, there are 11 respondents who are sponsors of IND's, which include protocols for xenotransplantation in humans. Other respondents for this collection of information are 18 source animal facilities which provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These 18 source animal facilities keep medical records of the herds/colonies as well as

the medical records of the individual source animal(s).

The PHS guideline proposes that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (3.4.3.1); (3) source animal biological specimens designated for PHS use (3.7.1); animal health records (3.7.2), including necropsy results (3.6.4); and (4) recipients' biological specimens (4.1.2).

The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation. Although the draft PHS guideline discussed holding specimens and records indefinitely, comments described this recommendation as impractical and unfeasible.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human-to-human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and Human T-lymphotropic virus (HTLV) are human retroviruses. They contain ribonucleic acid that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the cell machinery. That DNA can then be integrated into the cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods (e.g., approximately 30 years for Hepatitis C).

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient's medical records, and the records of the source animal for 50 years. If record systems are maintained in a computer data base, electronic backups should be kept in a secure office facility and backup on hard copy should be routinely performed (4.1.2.2). The development of such a record system would be a one-time burden. Such a system is intended to cross-reference and locate relevant records or recipients, source animals and facilities, and specimens of both the recipient and the source animal. Based on agency experience in establishing new, small volume, recordkeeping and tracking systems, we estimate approximately 16 hours would be necessary for each sponsor to set up the records system.

The total annual reporting and recordkeeping burden is estimated to be approximately 343 hours. The burden estimates are based on FDA's records of xenotransplantation-related IND's and estimates of time required to create an appropriate record system and to complete the various reporting and recordkeeping tasks described in the PHS guideline. A total of 22 IND's have been submitted since 1994 resulting in an average of 4 IND submissions per year. A total of 87 patients have been treated over a 3-year period indicating there are on average 29 xenotransplantation product recipients per year. FDA does not expect the number of clinical studies using xenotransplantation to increase significantly in the next few years; therefore, the agency is using these historical figures in projecting burdens for the next 3 years.

In the **Federal Register** of May 26, 2000 (65 FR 34196), FDA, on behalf of PHS, published a 60-day notice for public comment on the proposed collection of information provisions in the PHS guideline on infectious disease issues in xenotransplantation. FDA received four letters of comment in response to the notice. One of the letters did not provide any comments on the information collection provisions. PHS is responding below to those comments which address information collection issues. Other comments, not related to the proposed information collection provisions, will be considered by PHS in future revisions of the guideline.

Two comments addressed the PHS guideline recommendation that records be retained for 50 years.

(Comment 1) One comment stated that although the need for record

retention is very important, the retention of records for 50 years would be an undue burden on a sponsor.

(Comment 2) The other comment stated that, in view of rapidly changing technology that would require conversion of data whenever newer computer systems are acquired, the retention period would constitute an undue burden because of the difficulty of maintaining linked, computerized data throughout this period of time.

The 50-year retention period is intended to assist health care practitioners and public health officials in infectious disease surveillance and in tracking the source of an infection, disease, or illness that might emerge in the xenotransplantation product recipient, the source animal, or the animal herd or colony following xenotransplantation. The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human-to-human transplantation and are thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several of these human viruses can also be transmitted among individuals through intimate contact with human body fluids. For example, HIV and HTLV are human retroviruses that establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods (e.g., approximately 30 years for Hepatitis C).

As new computer data systems are developed, both software and hardware manufacturers typically provide for the transfer or conversion of existing data into a new system. With today's rapidly developing information technology, such transfers and conversions are usual and customary practice. It is the responsibility of the sponsor to ensure that all data are appropriately transferred to, and retrievable from, their new/updated computer systems. Because of the need for the long-term monitoring of the health of xenotransplantation product recipients and source animals, a sponsor should ensure that these data remain compatible with the computerized data systems that will be used during the 50-year retention period.

Two comments addressed the submission of information to a national xenotransplantation data base.

(Comment 3) One comment stated that it would be redundant to maintain records for 50 years and submit the same information to the National Xenotransplantation Database (NXD).

(Comment 4) The other comment stated that it would constitute an additional burden to submit information to the NXD for companies that already submit these data to FDA.

The NXD is not operational, but rather is in a pilot phase at this time. In developing this data base, PHS will make an effort, whenever possible, to avoid the imposition of any redundant or excess paperwork requirements. The public will be offered an opportunity to comment on any information collection burdens associated with the NXD prior to implementation. Sponsors should, however, recognize that they should maintain information that goes beyond what may be proposed for submission to the NXD. Such information includes, for example, personal identifiers that would enable PHS to contact specific individuals in case of a public health emergency, information on recipient contacts and health care workers, detailed information on the xenotransplantation procedure, and detailed information on husbandry of the source animal. Finally, because sponsors will need to monitor patient health over time, retention of records

that are more complete than data submitted to the NXD will be necessary.

(Comment 5) One comment stated that under sections 3.4.1 and 3.4.3.2, all incidents that affect herd or colony health that are recorded by a source animal facility should also be reported to FDA.

PHS agrees that in some cases incidents affecting animal herd or colony health should be reported to FDA. For example, under § 312.32(c)(1)(i)(B) (21 CFR 312.32(c)(1)(i)(B)), a sponsor must notify FDA and all participating investigators of "[a]ny finding from laboratory animals that suggests a significant risk for human subjects \* \* \*". Thus, if a health event in the source herd or colony suggests that recipients of xenotransplantation products from the source animals in that herd/colony may be at significant risk, the health event must be reported to FDA. However, as with any herd of animals, many health events may occur, such as injuries and minor illnesses. These events should be assessed, as appropriate, to determine whether there are any health implications for the xenotransplantation product recipients. Primary responsibility for designing and monitoring the conduct of xenotransplantation clinical trial rests with the sponsor (e.g., 21 CFR 312.23(a)(6)(iii)(d) and 312.50). As part of the sponsor's responsibility when filing an IND, procedures should be developed to identify incidents that

negatively affect the health of the herd or colony. This information is relevant to the safety review of every xenotransplantation product application. Such information, as well as the procedures to collect the information, should be reported to FDA. PHS has revised the guideline in section 3 to note the requirements for developing such procedures and for submitting the procedures to FDA.

(Comment 6) One comment stated that under section 2.5.7, clinical investigators should report to FDA any serious or unexplained illnesses of xenotransplantation product recipients that are reported to them.

PHS agrees that serious or unexplained illnesses should be reported but they should be reported by the sponsor rather than by the clinical investigator. For example, under § 312.32(c)(1)(i)(A), a sponsor must notify FDA and all participating investigators of any adverse experience associated with the use of an investigational product that is both serious and unexpected. The sponsor is in the best position to evaluate such events and determine the implications of the event for the safety of the xenotransplantation product and any potential impact such product may have on the clinical study.

FDA is requesting OMB approval for the following reporting and recordkeeping recommendations in the PHS guideline, except as noted:

TABLE 1.—REPORTING RECOMMENDATIONS

PHS Guideline Section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when source animal facility or sponsor ceases operations.
3.4	Standard operating procedures (SOP's) of source animal facility should be available to review bodies.
3.5.1	Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened.
3.5.4	Sponsor to make linked records described in section 3.2.7 available for review.
3.5.5	Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement.

TABLE 2.—REPORTING RECOMMENDATIONS

PHS Guideline Section	Description
3.2.3 <sup>1</sup>	Procedures to ensure the humane care of animals.
3.2.4 <sup>2</sup>	Incorporate procedures consistent with accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC's) Guide.
3.2.6 <sup>3</sup>	Animal facility SOP's should be described.
3.2.7 and 4.3	Establish records linking each xenotransplantation product recipient with relevant records, including SOP's of animal procurement, facility herd health surveillance, and lifelong health history of source animal. Maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and significant nosocomial exposures).
3.4.2	Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically.
3.4.3.2	Document full necropsy investigations including evaluation for infectious etiologies.
3.5.1	Document justification for shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement.
3.5.2	Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it.

TABLE 2.—REPORTING RECOMMENDATIONS—Continued

PHS Guideline Section	Description
3.5.4	Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient.
3.6.4	Document complete necropsy results on source animals (50-year record retention).
3.7	Link xenotransplantation product recipients to individual source animal records and archived biologic specimens.
4.2.3.2	Record baseline sera of xenotransplantation health care workers and specific nosocomial exposure.
4.2.3.3 and 4.3.2	Keep a log of health care workers' significant nosocomial exposure(s).
4.3.1	Document each xenotransplant procedure.
5.2	Document location and nature of archived PHS specimens in health care records of xenotransplantation product recipient and source animal.

<sup>1</sup> These procedures are set forth in 9 CFR parts 1, 2, and 3 and the "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (<http://www.grants.nih.gov/grants/olaw/references/phspol.htm>) and are considered usual and customary practice.

<sup>2</sup> These procedures are set forth in the AAALAC International Rules of Accreditation (<http://www.aaalac.org>) and the NRC's "Guide for the Care and Use of Laboratory Animals" (1996) and are considered usual and customary practice.

<sup>3</sup> These procedures are set forth in the "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (<http://www.grants.nih.gov/grants/olaw/references/phspol.htm>) and are considered usual and customary practice.

FDA estimates the burden for this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

PHS Guideline Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3.2.7.2 <sup>2</sup>	18	0	0	0.5	0
3.2.7.2 <sup>2</sup>	11	0	0	0.5	0
3.4 <sup>3</sup>	11	0.4	4	0.08	0.3
3.5.1 <sup>4</sup>	11	0.09	1	0.25	0.25
3.5.4 <sup>5</sup>	11	2.6	29	0.5	14.5
3.5.5 <sup>4</sup>	18	0.06	1	0.2	0.2
Total					15.25

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> No animal facility or sponsor has ceased operations to date and none are expected to cease operation in the next several years.

<sup>3</sup> FDA's records indicate that an average of four IND's have been and are expected to be submitted per year.

<sup>4</sup> Has not occurred in the past 5 years and is expected to continue to be a rare occurrence.

<sup>5</sup> Based on 87 patients treated over the last 3 years, the average number of xenotransplantation product recipients per year is estimated to be 29.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

PHS Guideline Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
3.2.7 and 4.3 <sup>2</sup>	11	1	N/A	16	172
3.4.2 <sup>3</sup>	11	15.1	166	3.77	41.5
3.4.3.2 <sup>4</sup>	18	4.0	72	1.32	23.8
3.5.1 <sup>5</sup>	11	0.09	(0–1) 1	0.045	0.5
3.5.2 <sup>5</sup>	11	0.09	(0–1) 1	0.023	0.25
3.5.4	11	2.6	29	0.45	4.9
3.6.4 <sup>6</sup>	11	5.3	58	1.32	14.5
3.7 <sup>6</sup>	18	3.2	58	0.26	4.6
4.2.3.2 <sup>7</sup>	11	27.3	300	4.64	51
4.2.3.2 <sup>5</sup>	11	0.09	(0–1) 1	0.015	0.17
4.2.3.3 and 4.3.2 <sup>5</sup>	11	0.09	(0–1) 1	0.015	0.17
4.3.1	11	2.6	29	0.66	7.25
5.2 <sup>8</sup>	11	7.9	87	0.63	6.96
Total					327.6

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> A one-time burden for setting up a recordkeeping system which rapidly links information regarding the specimen archive, the recipient's medical records, and source animals.

<sup>3</sup> Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd x 1 herd per facility x 18 facilities = 108 sentinel animals. There are approximately 58 source animals per year (see footnote 6 of this table); 108 + 58 = 166 monitoring records to document.

<sup>4</sup> Necropsy for animal deaths of unknown cause estimated to be approximately 4 per herd per year x 1 herd per facility x 18 facilities = 72.

<sup>5</sup> Has not occurred in the past 5 years and is expected to continue to be a rare occurrence.

<sup>6</sup> On average, 2 source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient x 29 recipients annually = 58 source animals per year. (See footnote 5 of table 3 of this document.)

<sup>7</sup> FDA estimates there are approximately 12 clinical centers doing xenotransplantation procedures x approximately 25 health care workers involved per center = 300 health care workers.

<sup>8</sup> Fifty-eight source animal records + 29 recipient records = 87 total records.

Because xenotransplantation is a relatively new area of medical science, potential problems and adverse effects are not well known. Because of the potential risk for cross-species transmission of infectious agents from source animals to patients, their close contacts, and the general public and the latency period of known human pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, they are not considered "information" as that term is defined under the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with

small patient populations, the number of records is small and, therefore, the capital and operating costs are expected to be insignificant at this time.

Many of the information collections described in this guideline are not new and can be found under existing regulations and, therefore, are not included in the hour burden estimates in tables 1 through 4 of this document. These information collections are included under the regulations and approved under the OMB control numbers as follows: (1) "Current Good Manufacturing Practice for Finished Pharmaceuticals," 21 CFR 211.1 through 211.208, approved under OMB control number 0910-0139; (2) "Investigational

New Drug Application," 21 CFR 312.1 through 312.160, approved under OMB control number 0910-0014; and (3) information included in a license application, 21 CFR 601.2, approved under OMB control number 0910-0427. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (e.g., it may be regulated as a medical device), FDA expects, based on its knowledge and experience with xenotransplantation, that any xenotransplantation product subject to FDA regulation within the next 3 years will most likely be regulated as a biological product.)

TABLE 5.—COLLECTIONS OF INFORMATION UNDER CURRENT REGULATIONS

PHS Guideline Section	Description of Collection of Information Activity	21 CFR Section (unless otherwise stated)
2.2.1	Document offsite collaborations.	312.52
2.5	Sponsor ensure counseling patient + family + contacts.	312.62(c)
3.1.1 and 3.1.6	Document well-characterized health history and lineage of source animals.	312.23(a)(7)(iv)(a) and 211.84
3.1.8	Registration with and import permit from the Centers for Disease Control and Prevention.	42 CFR 71.53
3.2.2	Document collaboration with accredited microbiology labs.	312.52
3.2.5, 3.4, and 3.4.1	Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care.	211.100 and 211.122
3.3.3	Validate assay methods.	211.160(a)
3.6.1	Procurement and processing of xenografts using documented aseptic conditions.	211.100 and 211.122
3.6.2	Develop, implement, and enforce SOP's for procurement and screening processes.	211.84(d) and 211.122(c)
3.6.4	Communicate to FDA animal necropsy findings pertinent to health of recipient.	312.32(c)
3.7.1	PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected.	312.23(a)(6)
4.1.1	Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program life-long (justify > 2 yrs.); investigator case histories (2 yrs. after investigation is discontinued).	312.23(a)(6)(iii)(f) and (g), and 312.62(b) and (c)
4.1.2	Sponsor to justify amount and type of reserve samples.	211.122
4.1.2.2	System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal).	312.57(a)
4.1.2.3	Notify FDA of a clinical episode potentially representing a xenogeneic infection.	312.32
4.2.2.1	Document collaborations (transfer of obligation).	312.52
4.2.3.1	Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly).	312.50
4.3	Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories.	312.57 and 312.62(b)

Dated: October 10, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00-26671 Filed 10-17-00; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

**Name of Committee:** Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

**General Function of the Committee:** To provide advice and recommendations to the agency on FDA's regulatory issues.

**Date and Time:** The meeting will be held on November 8, 2000, 8:30 a.m. to 5 p.m.

**Location:** Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.



*Contact Person:* Sara M. Thornton, Center for Devices and Radiological Health (HFZ 460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2053, e-mail: SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a collagen glaucoma drainage device for the reduction of intraocular pressure in patients with open-angle glaucoma uncontrolled on maximum tolerated medical therapy. The committee will also discuss issues related to the development of guidance for the postapproval study of extended wear contact lenses used beyond 7 days. Study design topics will include the type of study, definition of endpoints, and selection of participating study sites.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 1, 2000. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of the committee deliberations on the PMA, an additional 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 11, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00-26741 Filed 10-17-00; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 99D-4114]

#### **“Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors;” Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled “Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors” dated October 2000. The guidance document applies to the manufacture of gene therapy retroviral vector products intended for in vivo or ex vivo use and to followup monitoring of patients who have received retroviral vector products. The guidance document announced in this notice finalizes the draft guidance document entitled “Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors,” announced in the **Federal Register** of November 3, 1999. The guidance document also supplements the guidance document entitled “Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy,” dated March 1998; and a letter to sponsors of an investigational new drug using retroviral vectors, dated September 20, 1993.

**DATES:** Submit written comments at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance document entitled “Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors,” dated October 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food

and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by fax by calling the FAX Information System at 1-888-CBER-FAX or 301-827-3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Valerie A. Butler, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

FDA is announcing the availability of a guidance document entitled “Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors” dated October 2000. The guidance document applies to the manufacture of gene therapy retroviral vector products intended for in vivo or ex vivo use and to followup monitoring of patients who have received retroviral vector products. The document provides guidance for replication competent retrovirus (RCR) testing during manufacture, including timing, amount of material to be tested, and general testing methods. The document also provides guidance on monitoring patients for evidence of retroviral infection. The recommendations are based on data and analyses generated by CBER and members of the gene therapy community. The guidance document finalizes the draft document entitled “Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors,” announced in the **Federal Register** of November 3, 1999 (64 FR 59783). The guidance document also supplements the guidance and recommendations pertaining to RCR testing given in the following documents: (1) “Guidance for Industry: Guidance for Human Somatic Cell

Therapy and Gene Therapy" dated March 1998 (issued on the Internet); and (2) letter to sponsors of an investigational new drug using retroviral vectors, dated September 20, 1993.

The guidance document represents the agency's current thinking regarding testing for RCR in retroviral vector based gene therapy products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

## II. Comments

Interested persons may, at any time submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the

Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the guidance document at <http://www.fda.gov/cber/guidelines.htm>.

Dated: October 5, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00-26670 Filed 10-17-00; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office at (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project:** Grantee Reporting Requirements for the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990—Title III (OMB 0915-0158)—Revision.

Section 2651 of the Public Health Service (PHS) Act (commonly known as Title III of the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act of 1990), provides categorical funding to increase the capacity and capability of organizations that provide primary health care to HIV-related early intervention services to medically underserved persons who have, or are at high risk for, HIV infection. These services are provided as part of a continuum of HIV prevention and health care services.

The bulk of the information being collected describes the epidemiologic and demographic characteristics of the populations receiving early intervention services from grant recipients, and provides the basis for the annual report to the Secretary, which is legislatively mandated. It is also used to monitor the delivery of services, guide Federal policy, and assist in program development and evaluation.

The estimated response burden is as follows:

Form name	No. of respondents	Responses per respondent	Total responses	Average time per response	Total burden hours
TIIR PDR .....	278	1	278	80	22,240

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 12, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00-26742 Filed 10-17-00; 8:45 am]

**BILLING CODE 4160-15-U**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### Invasive Species Advisory Committee

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting of the Invasive Species Advisory Committee.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meeting of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The meeting on October 24 will be a joint meeting of the Advisory Committee and various Federal Agency Officials. The meeting on October 25 will consist of the Advisory Committee only. Both meetings will be open to the public.

Attendance will be limited to space available.

**DATES:** Meeting of Invasive Species Advisory Committee and Federal Agencies: 8:00 a.m.–4:15 p.m., Tuesday October 24, 2000; Meeting of Advisory Committee only: 8:30 a.m.–3:00 p.m., Wednesday, October 25, 2000.

**ADDRESSES:** U.S. Fish and Wildlife Service, National Conservation Training Center, Shepherdstown, WV. The October 24th meeting will be held in the Auditorium. The October 25th meeting will be held in the Instructional West Building, Room 170.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Passe, National Invasive Species Council Program Analyst; E-mail: [kelsey\\_passe@ios.doi.gov](mailto:kelsey_passe@ios.doi.gov); Phone: (202) 208-6336; Fax: (202) 208-1526.

Dated: October 16, 2000.

**Lori Williams,**

*Executive Director, National Invasive Species Council.*

[FR Doc. 00-26927 Filed 10-17-00; 8:45 am]

**BILLING CODE 4310-RK-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-610-09-0777-42]

#### Meeting of the California Desert District Advisory Council October 21 Meeting

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the location for the Bureau of Land Management California Desert District Advisory Council's Saturday, October 21 meeting has been changed. The Council will meet in formal session from 8:00 a.m. to 5:00 p.m. at the Barstow Community College, located at 2700 Barstow Road, Barstow, California.

The Council and interested members of the public will participate in a field tour of BLM-administered public lands on Friday, October 20, 2000. They will assemble for the field tour at the Holiday Inn parking lot at 7:45 a.m. and depart at 8:00 a.m. The hotel is located at 1511 East Main Street in Barstow. Tour stops will include sites along Route 66, Amboy Crater, Cadiz Land Company for a discussion on the proposed Cadiz Groundwater Storage and Dry-Year Supply Program, Camp Essex (Patton Camp), and the community of Goffs. Members of the public are welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

The Council will meet in formal session on Saturday. Agenda items will include comments from BLM California State Director Mike Pool, and updates/briefings on the BLM National Off-Highway Vehicle Management Strategy, Route 66, the Draft California Desert District Recreation Fee Policy, and a California Desert District Non-Profit Association.

At 2:00 p.m. discussions will focus on the proposed Cadiz Groundwater Storage Project, which will include a panel discussion and overview of the proposed project. The Council meeting also will serve as a public meeting during which BLM will accept and record public comment regarding the proposed project. Members of the public must register with the Council Chairman to speak. The time allotted each speaker will be based upon the number of people who register to speak.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the beginning of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Doran Sanchez at (909) 697-5220, BLM California Desert District External Affairs.

Dated: October 12, 2000.

**Douglas Romoli,**

*Acting District Manager.*

[FR Doc. 00-26705 Filed 10-17-00; 8:45 am]

**BILLING CODE 1060-HG-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Bay-Delta Advisory Council's Ecosystem Roundtable Meeting and Ecosystem Roundtable Amendments Subcommittee Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Meetings.

**SUMMARY:** The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on November 2, 2000 to discuss an initial recommendation for funding under the 2001 Ecosystem Restoration Program project selection process. The Amendments Subcommittee will also meet on November 2, 2000 to discuss proposed contract modifications for several ongoing ecosystem restoration projects. These meetings are open to the public. Interested persons may make oral statements to the Ecosystem Roundtable an Amendments Subcommittee or may file written statements for consideration.

**DATES:** The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 3:00 p.m. on Thursday, November 2, 2000. The Ecosystem Roundtable Amendments Subcommittee meeting will be held from 3:00 p.m. to 4:00 p.m. on Thursday, November 2, 2000.

**ADDRESSES:** The Ecosystem Roundtable and Amendments Subcommittee will meet at the Convention Center, 1400 J Street, Room 204, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Fawver, CALFED Bay-Delta Program, at (916) 657-2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653-6952 or TDD (916) 653-6934 at least one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan that addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by

CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 12, 2000

**Lester Snow,**

*Regional Director, Mid-Pacific Region.*

[FR Doc. 00-26702 Filed 10-17-00; 8:45 am]

BILLING CODE 4310-MN-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-334]

### Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Notice of Rescission of Limited Exclusion Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has rescinded the limited exclusion order previously issued in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Donnette Rimmer, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-0663.

**SUPPLEMENTAL INFORMATION:** The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.76 of the Commission's rules of Practice and Procedure (19 CFR 210.76).

On August 20, 1997, the Commission issued a limited exclusion order in the investigation based upon a finding that respondents Showa Aluminum Corporation and Showa Aluminum Corporation of America (collectively "Showa") had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by importing certain condensers that infringed claims 9 and 10 of U.S. Letters Patent assigned to Modine.

On September 7, 2000, Showa and complainant Modine Manufacturing Company ("Modine") filed a joint petition to rescind the remedial order

under Commission rule 210.76 on the basis of a settlement agreement they had reached. Showa and Modine asserted that their settlement agreement constituted "changed conditions of fact or law" sufficient to justify rescission of the order under Commission rule 210.76(a), 19 CFR 210.76(a).

Having reviewed the parties' submissions, the Commission determined that the petition and settlement agreement satisfy the requirements of rule 210.76(a). The Commission therefore issued an order rescinding the limited exclusion order previously issued in the investigation.

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., DC 20436, telephone (202) 205-2000. Public documents are available for downloading from the Commission's internet server (<http://www.usitc.gov>). Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

Issued: October 10, 2000.

By Order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00-26747 Filed 10-17-00; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-439]

### Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. § 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 15, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of PCTEL, Inc. of Milpitas, California. A supplement to the complaint was filed on October 3, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States

after importation of certain HSP modems, software and hardware components thereof, and products containing same by reason of infringement of claims 1-2 of U.S. Letters Patent 5,787,305, claims 1-4, 7-8, and 11-15 of U.S. Letters Patent 5,931,950, claims 1, 2, 10, and 15-17 of U.S. Letters Patent 4,841,561, and claims 1, 6-7, 10-12, and 15-19 of U.S. Letters Patent 5,940,459. The complaint further alleges that there exists, or is in the process of being established, an industry in the United States as required by subsection (a)(2) of section 337.

The complainant request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may be obtained by accessing its internet server (<http://www.usitc.gov>).

**FOR FURTHER INFORMATION CONTACT:** Shival P. Virmani, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2568.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2000).

### Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on October 10, 2000, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain HSP modems, software or hardware components thereof, or products containing same by

reason of infringement of claims 1 or 2 of U.S. Letters Patent 5,787,305, claims 1–4, 7–8, or 11–15 of U.S. Letters Patent 5,931,950, claims 1, 2, 10, or 15–17 of U.S. Letters Patent 4,841,561, or claims 1, 6–7, 10–12, or 15–19 of U.S. Letters Patent 5,940,459, and whether there exists, or is in the process of being established, an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—PCTEL, Inc., 1331 California Circle, Milpitas, CA 95035.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ESS Technology, Inc., 48401 Fremont Blvd., Fremont, CA 94538

Smart Link Ltd., 7 Giborei Israel St., Southern Industrial Zone, Netanya 42505, Israel

Smart Link Technologies, Inc., 44 Pleasant St., Watertown, MA 02172

(c) Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–J, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice

and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 11, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26748 Filed 10–17–00; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

#### Advisory Board Meeting

*Time and Date:* 8:45 a.m. to 4:00 p.m. on Monday, November 13, 2000 & 8:00 a.m. to 12 noon on Tuesday, November 14, 2000.

*Place:* Holiday Inn Holidome & Conference Center, 5400 Holiday Drive, Frederick, Maryland 21703.

*Status:* Open.

*Matters to be Considered:* Tours/ Presentations Related to the Maryland Community Criminal Justice Treatment Program in Frederick County; Updates on Mental Health Program Options and Interstate Compact Activities; Results of Advisory Board Hearings; and Reports by Program Divisions.

**CONTACT PERSON FOR MORE INFORMATION:** Larry Solomon, Deputy Director, 202–307–3108, ext. 155.

**Larry Solomon,**

*Deputy Director.*

[FR Doc. 00–26757 Filed 10–17–00; 8:45 am]

**BILLING CODE 4410–36–M**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Prisons

#### Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Development of a Medium-Security Federal Correctional Facility in Pollock (Grant Parish), Louisiana.

**AGENCY:** Bureau of Prisons, Department of Justice.

**ACTION:** Notice of intent to prepare a draft environmental impact statement (DEIS).

#### SUMMARY:

#### Proposed Action

The United States Department of Justice, Federal Bureau of Prisons, has determined that an additional medium-

security Federal Correctional Institution (FCI) is needed in its system. The Federal Bureau of Prisons (BOP) is facing unprecedented growth in its inmate population. As a result, medium-security correctional institutions will be impacted. The BOP currently controls a 464-acre parcel to the southeast of the Pollock Municipal Airport, located eight miles southwest of the Town of Pollock and 17 miles north of Alexandria, Louisiana. Construction is currently underway for a high-security U.S. Penitentiary, an adjacent minimum-security satellite Camp, and ancillary facilities that will serve the various components. The BOP proposes to construct and operate a medium-security FCI on a portion of the 464-acre parcel. The medium-security facility would provide habitation for approximately 1152 inmates. The site appears to be of sufficient size to provide space for housing, programs, administrative services and other support areas. However, the BOP will also analyze a 320-acre tract to the immediate west for the project and/or for future expansion. This Notice also initiates the BOP's responsibilities under the National Historic Preservation Act of 1966, as amended.

#### The Process

In the process of evaluating the site, several aspects will receive detailed examination including: but not limited to utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, and socioeconomic impacts. Possible archeological and cultural resources will be studied and documented pursuant to the National Historic Preservation Act of 1966, as amended.

#### Alternatives

In developing the DEIS, the option of "no action" for the proposed facility will be fully and thoroughly examined.

#### Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Scoping Meeting will be held at the Pollock Elementary School on 4001 Highway 8 at 7:00 p.m. on November 15, 2000, in Pollock, Louisiana. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, other meetings and discussions will be held by BOP representatives, local officials and other interested community parties.

**DEIS Preparation**

Public notice will be given concerning the availability of the DEIS for public review and comment.

**Address**

Questions concerning the proposed action and the DEIS may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534, Attention: Issac J. Gaston, telephone (202) 514-6470, telefacsimile (202) 616-6024, E-mail: siteselection@bop.gov.

Dated: October 12, 2000.

**David J. Dorworth,**

*Chief, Site Selection and Environmental Review Branch.*

[FR Doc. 00-26765 Filed 10-17-00; 8:45 am]

**BILLING CODE 4410-05-P**

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-37,600 and NAFTA-03998]

**Trinity Industries, Incorporated, Mt. Orab, OH; Notice of Affirmative Determination Regarding Application for Reconsideration**

By letter of September 25, 2000 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance, applicable to petition numbers TA-W-37,600 and NAFTA 03998, respectively. The denial notices were signed on August 16, 2000 and published in the **Federal Register** on September 12, 2000 (65 FR 55049 and 55050, respectively).

The petitioner provided additional information about imports of coal cars which should have been considered by the Department in its survey of customers.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 4th day of October 2000.

**Linda G. Poole,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 00-26729 Filed 10-17-00; 8:45 am]

**BILLING CODE 4510-30-M**

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-37,709]

**The Boeing Company, St. Louis, Missouri; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at The Boeing Company, St. Louis, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-37,709; The Boeing Company St. Louis, Missouri (October 10, 2000).

Signed at Washington, D.C. this 11th day of October, 2000.

**Linda G. Poole,**

*Acting Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00-26720 Filed 10-17-00; 8:45 am]

**BILLING CODE 4510-30-M**

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-37,839 and 839A]

**Congoleum Corp., Trainer, PA and Mercerville, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 18, 2000, applicable to workers of Congoleum Corp., Trainer, Pennsylvania. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Plant #1, Mercerville, New Jersey location of Congoleum Corp. The workers are engaged in the production of vinyl flooring and examine, cut pack and ship flooring for all Congoleum's production facilities, including Trainer, Pennsylvania.

Accordingly, the Department is amending the certification to include workers of Congoleum Corp., Plant #1, Mercerville, New Jersey.

The intent of the Department's certification is to include all workers of Congoleum Corp. who are adversely affected by increased imports.

The amended notice applicable to TA-W-37,839 is hereby issued as follows:

"All workers of Congoleum Corp., Trainer, Pennsylvania (TA-W-37,839) and Plant #1, Mercerville, New Jersey (TA-W-37,839A) who became totally or partially separated from employment on or after June 15, 1999 through August 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 4th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00-26725 Filed 10-17-00; 8:45 am]

**BILLING CODE 4510-30-M**

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-38,100]

**Farah/Savane Intl., El Paso, TX; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 18, 2000 in response to a petition filed on behalf of workers at Farah/Savane Intl., El Paso, Texas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-37,999). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 25th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00-26730 Filed 10-17-00; 8:45 am]

**BILLING CODE 4510-30-M**

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-37,607 and TA-W-37,607A]

**Henry I. Siegel Co., Inc., Now Known  
as Durango Apparel Manufacturing,  
Inc., Bruceton, TN and New York, NY;  
Amended Certification Regarding  
Eligibility to Apply for Worker  
Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 16, 2000, applicable to workers of Henry I. Siegel Co., Inc., Bruceton, Tennessee. The notice was published in the **Federal Register** on June 8, 2000 (65 FR 36469).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's and women's jeans, slacks and shorts. Findings show that the Department incorrectly set the worker certification impact date at April 30, 2000 for the New York, New York location. The impact date should be June 30, 1999, one year prior to the date of the petition.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-37,607 and TA-W-37,607A is hereby issued as follows:

"All workers of Henry I. Siegel Co., Inc., now known as Durango Apparel Manufacturing, Inc., Bruceton, Tennessee (TA-W-37,607) who became totally or partially separated from employment on or after April 30, 2000 through May 16, 2002 and "all workers of Henry I. Siegel Co., Inc. now known as Durango Apparel Manufacturing, Inc., New York, New York (TA-W-37,607A) who became totally or partially separated from employment on or after June 30, 1999 through May 16, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 4th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-26724 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-38,087]

**Imaging Technologies, Inc., Cookeville,  
TN; Notice of Termination of  
Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 18, 2000, in response to a petition filed on behalf of workers at Imaging Technologies Inc., Cookeville, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 26th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment  
Assistance.*

[FR Doc. 00-26726 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-37,411 and 411A]

**The Monet Group, Incorporated, East  
Providence, RI and New York, NY;  
Amended Certification Regarding  
Eligibility to Apply for Worker  
Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 28, 2000, applicable to workers of the Monet Group, Incorporated East Providence, Rhode Island and New York, New York. The notice was published in the **Federal Register** on April 21, 2000 (65 FR 21473).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of fashion jewelry. New information received from the company shows that Liz Caliborne Incorporated, through a newly formed wholly owned subsidiary, Monet International, Incorporated, purchased the assets of The Monet Group, Incorporated as of July 26, 2000. Information also shows that workers separated after July 26, 2000 from employment at the subject firm, had their wages reported under two separate unemployment insurance (UI) tax

account; Monet Group, Incorporated and Monet International, Incorporated.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-37,411 is hereby issued as follows:

"All workers of Monet Group, Incorporated, now known as Monet International, Incorporated, a subsidiary of Liz Caliborne, Incorporated, East Providence, Rhode Island (TA-W-37,411) and New York, New York (TA-W-37,411A) who became totally or partially separated from employment on or after May 5, 2000 through March 28, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. This 4th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-26718 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration****Investigations Regarding Certifications  
of Eligibility to Apply for Worker  
Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than October 30, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address

shown below, not later than October 30, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade

Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, D.C. this 2nd day of October, 2000.

**Curtis Kooser,**  
*Acting Director, Division of Trade Adjustment Assistance.*

# APPENDIX

[Petitions Instituted On 10/02/2000]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,136 ....	Fruit of The Loom (Wrks) .....	Harlinger, TX .....	09/11/2000	Sew Blue Jeans.
38,137 ....	Vincennsis Manufacturing (Wrks) .....	Vincennsis, IN .....	09/20/2000	Automobile Seats.
38,138 ....	Ratheon T.I. (Wrks) .....	Lewisville TX .....	09/15/2000	Surface Mount Boards.
38,139 ....	Lyall Alabama (Wrks) .....	Ardmore, AL .....	09/06/2000	Wire Harnesses.
38,140 ....	Esquire Novelty (Comp) .....	Amsterdam, NY .....	09/15/2000	Western Style Toys.
38,141 ....	Lilly Industries (Wrks) .....	Paulsboro, NJ .....	09/09/2000	Industrial Paint Products.
38,142 ....	Bush Brothers and Co. (Wrks) .....	Blytheville, AR .....	09/13/2000	Canned Foods, Tomato Paste, Spinach.
38,143 ....	Copley Pharmaceutical (Comp) .....	Canton, MA .....	09/13/2000	Pharmaceutical Products.
38,144 ....	Avoca Manufacturing (Wrks) .....	Avoca, PA .....	09/15/2000	Children's Clothing.
38,145 ....	Ceragraphic, Inc. (Wrks) .....	Hackensack, NJ .....	09/12/2000	Perfume Bottles, Cream Containers.
38,146 ....	Rosboro Lumber (WCIW) .....	Springfield, OR .....	09/16/2000	Lumber, Plywood.
38,147 ....	Potlatch Corp. (Wrks) .....	Pierce, ID .....	09/14/2000	Plywood Products.
38,148 ....	Telex Communications, Inc (Comp) .....	Newport, TN .....	09/15/2000	Industrial Audio Systems.
38,149 ....	Plum Creek Timber (Comp.) .....	Pablo, MT .....	09/18/2000	Lumber Boards.
38,150 ....	Key Circuit Co (Wrks) .....	Fountain Valley, CA ...	09/18/2000	Printed Circuit Boards.
38,151 ....	Elliott Co. (USWA) .....	Jeannette, PA .....	09/06/2000	Turbines and Compressors.
38,152 ....	Montgomery Hosiery Mill (Comp) .....	Star, NC .....	09/18/2000	Socks.
38,153 ....	Agco Corp. (Wrks) .....	Coldwater, OH .....	09/13/2000	Farm Equipment.
38,154 ....	Leather's Best (Wrks) .....	Johnstown, NY .....	09/19/2000	Full Grain Leather Goods.
38,155 ....	Esco Corp. (Comp) .....	San Diego, CA .....	09/15/2000	Hydraulic Demolition Hammers.
38,156 ....	Matsushita Home Appliance (Comp) .....	Danville, KY .....	09/11/2000	Microwave Ovens.
38,157 ....	Ashland Chemical (UAW) .....	Ashtabula, OH .....	09/11/2000	Unsaturated Polyester Resins.
38,158 ....	Cookson Semiconductor (Wrks) .....	Warwick, RI .....	09/18/2000	Conductive and Non-Conductive Films.
38,159 ....	Excel USA, Inc. (Comp) .....	West Wareham, MA ...	09/15/2000	Surf Masts, Hockey, Sticks.
38,160 ....	Jomac-Wells Lamont (Comp) .....	Brunswick, MO .....	09/20/2000	Industrial Work Gloves.
38,161 ....	Liberty Precision Tool Co (Wrks) .....	Bessemer City, NC ....	09/21/2000	Machine Parts—Drill Fixtures.
38,162 ....	Excel Finishing Inc. (Wrks) .....	Old Fort, NC .....	09/21/2000	Textiles—Finishing Dyeing.
38,163 ....	Omron Manufacturing (Comp) .....	St. Charles, IL .....	09/3/2000	Telecommunication Relays.
38,164 ....	Nafta Textile Mills, LLC (Wrks) .....	Manville, RI .....	09/20/2000	Woven Cloth, Dyed and Finished.
38,165 ....	L and L Manufacturing Co. (Wrks) .....	Los Angeles, CA .....	09/19/2000	Sew Clothing.
38,166 ....	Garan Manufacturing Corp (Wrks) .....	Rainsville, AL .....	09/14/2000	Apparel.
38,167 ....	Ametek Aerospace (IUE) .....	Wilmington, MA .....	09/18/2000	Carles, Thermocouples, Machined Parts.
38,168 ....	Anchor Dye and Finishing (Wrks) .....	Philadelphia, PA .....	09/19/2000	Finished Camelhair, Cashmere, Angora.
38,169 ....	Quality Veneer/Hanel (Wrks) .....	Odell, OR .....	09/20/2000	Dimensional Lumber.
38,170 ....	Advance Transformer (Wrks) .....	Monroe, WI .....	09/19/2000	Ballasts—Lighting.
38,171 ....	Lear Corp (UAW) .....	Traverse City, MI .....	09/20/2000	Terminal Block Assemblies.
38,172 ....	Maxxim Medical (Wrks) .....	Los Gatos, CA .....	09/15/2000	Disposable Gloves.
38,173 ....	Ethicon Endo-Surgery, Inc (Comp) .....	Cincinnati, OH .....	09/20/2000	Surgical Instruments.
38,174 ....	Paper, Calmenson and Co (USWA) .....	Bucyrus, OH .....	09/22/2000	Grader Blades.
38,175 ....	Caitac Manufacturing, Inc (Comp) .....	Bellingham, WA .....	09/18/2000	Men's Denim Jeans.
38,176 ....	Tyco Electronics (Comp) .....	Romeoville, IL .....	09/08/2000	Battery Packs.
38,177 ....	Potlatch Corp. (Wrks) .....	Lewiston, ID .....	09/11/2000	Pulp and Paper.
38,178 ....	Flowserve Corp. (USWA) .....	Phillipsburg, NJ .....	09/14/2000	Enigne Pumps.

[FR Doc. 00-26727 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA—04155]

#### Alstom Power, Inc., Heat Recovery Steam Generators, Kings Mountain, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA—

TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 14, 2000 in response to a petition filed on behalf of workers at Alstom Power, Incorporated, Heat Recovery Steam Generators, Kings Mountain, North Carolina.

The petitioner requested that the petition for NAFTA-TAA be withdrawn. Consequently, further investigation in this case would serve no purposes, and the investigation has been terminated.



Signed at Washington, DC, this 6th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00-26723 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(b)(1)

of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Director of DTAA not later than October 30, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than October 30, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of October, 2000.

**Linda G. Poole,**

*Acting Director, Division of Trade Adjustment Assistance.*

## APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Asarco (Wkrs) .....	East Helena, MT .....	08/30/2000	NAFTA-4,122	Metal products.
Eastman Kodak (Co.) .....	Rochester, NY .....	08/30/2000	NAFTA-4,123	Molding for single use cameras.
Kirsch (UAW) .....	Sturgis, MI .....	08/09/2000	NAFTA-4,124	Drapery hardware.
Allegheny Ludlum (USWA) .....	Washington, PA .....	08/31/2000	NAFTA-4,125	Stainless steels.
Acer America (Co.) .....	San Jose, CA .....	08/28/2000	NAFTA-4,126	Computers.
Paramount Headwear (Co.) .....	Dexter, MO .....	08/28/2000	NAFTA-4,127	Straw headwear.
Fawn Industries (Co.) .....	Middlesex, NC .....	09/05/2000	NAFTA-4,128	Injection molded plastic parts.
Imaging Technologies (Co.) .....	Cookeville, TN .....	08/28/2000	NAFTA-4,129	Ink jet systems.
Brown Wooten Mills (Co.) .....	Mount Airy, NC .....	08/14/2000	NAFTA-4,130	Socks.
Burlington Resources (Wkrs) .....	Sidney, MT .....	09/06/2000	NAFTA-4,131	Oil and gas.
Nova Bus (Co.) .....	Roswell, NM .....	09/01/2000	NAFTA-4,132	Transit buses.
Marino Technologies (Co.) .....	Opa Locka, FL .....	09/08/2000	NAFTA-4,133	Bulk bags.
Lebanite Corporation (Wkrs) .....	Lebanon, OR .....	09/07/2000	NAFTA-4,134	Hardboard.
United States Leather (Co.) .....	Conover, NC .....	09/08/2000	NAFTA-4,135	Leather.
Banta Healthcare Group (Wkrs) .....	Eaton Park, FL .....	09/08/2000	NAFTA-4,136	Sponges, dental and medical.
Quality Veneer & Lumber—Hanel Lumber (Wkrs) .....	Hood River, OR .....	09/05/2000	NAFTA-4,137	Lumber.
Delco Remy International (UAW) .....	Anderson, IN .....	09/07/2000	NAFTA-4,138	Starters and alternators.
Lear Corporation (UAW) .....	Detroit, MI .....	08/07/2000	NAFTA-4,139	Form seat backs & cushions.
Ultima Trim (Wkrs) .....	Los Indios, TX .....	09/06/2000	NAFTA-4,140	Leather seats.
Bru Mar (Wkrs) .....	Allentown, PA .....	09/06/2000	NAFTA-4,141	Swimsuits.
Fawn Industrial (Co.) .....	Maryville, TN .....	09/11/2000	NAFTA-4,142	Injection molded plastics parts.
Kezar Falls Woolen (Wkrs) .....	Kezar Falls, ME .....	09/11/2000	NAFTA-4,143	Wool blend cloth.
Gaffney Manufacturing (Co.) .....	Spartanburg, SC .....	09/08/2000	NAFTA-4,144	Ladies apparel.
Wolverine World Wide (Co.) .....	Rockford, MI .....	08/21/2000	NAFTA-4,145	Shoes.
AirBoss Polymer Products (IBS) .....	South Haven, MI .....	09/11/2000	NAFTA-4,146	Molded rubber products.
Paccar Kenworth (Wkrs) .....	Seattle, WA .....	08/31/2000	NAFTA-4,147	Trucks.
Mead Products (PACE) .....	Kalamazoo, MI .....	09/05/2000	NAFTA-4,148	Paper.
Qwik Tool (Wkrs) .....	Lexington, KY .....	09/07/2000	NAFTA-4,149	Auto products.
Holcroft (Wkrs) .....	Livonia, MI .....	08/17/2000	NAFTA-4,150	Heat treating furnaces.
Equitable Production (Wkrs) .....	Kingsport, TN .....	09/15/2000	NAFTA-4,151	Natural gas & oil.
Tyco Electronics (Co.) .....	Boyne City, MI .....	08/15/2000	NAFTA-4,152	Automotive electrical terminals.
General Binding (Wkrs) .....	Aubun Hills, MI .....	08/08/2000	NAFTA-4,153	Binders.
Renaissance Industries (USWA) .....	DuBois, PA .....	09/13/2000	NAFTA-4,154	Pipe thread protectors.
Alstom Power (Co.) .....	Kings Mountain, NC .....	09/14/2000	NAFTA-4,155	Heat recovery steam generators.
Archer Daniels Midland (Wkrs) .....	Helena, AR .....	09/13/2000	NAFTA-4,156	Soybean.
Heinz Pet Products (Wkrs) .....	El Paso, TX .....	09/11/2000	NAFTA-4,157	Jerky beef & hearty bone dog food.
Thaw Corporation (Co.) .....	Seattle, WA .....	09/13/2000	NAFTA-4,158	Garments & equipment.
Fujitsu Computer Products of America, (Co.) .....	Hillsboro, OR .....	09/14/2000	NAFTA-4,159	Repair of hard disk drives.
Quality Veneer and Lumber (IAM) .....	Seattle, WA .....	09/19/2000	NAFTA-4,160	Lumber.

## APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Evy of California (Wkrs) .....	Los Angeles, CA .....	09/13/2000	NAFTA-4,161	Children's & infants wear.
Potlatch (Wkrs) .....	Pierce, ID .....	09/18/2000	NAFTA-4,162	Wood products.
Lear Corporation (UAW) .....	Traverse City, MI .....	09/26/2000	NAFTA-4,163	Terminal block.
Avalon Payroll Group (Wkrs) .....	New York, NY .....	09/25/2000	NAFTA-4,164	Film, television & commercial production.
Sharp Manufacturing Co. of America (IBEW) .....	Memphis, TN .....	09/22/2000	NAFTA-4,165	Television sets.
Flowserve (USWA) .....	Phillipsburg, NJ .....	09/20/2000	NAFTA-4,166	Engineered pumps.
Rosboro Lumber (Wkrs) .....	Springfield, OR .....	09/18/2000	NAFTA-4,167	Lumber plywood.
Tyco Electronics (Co.) .....	Romeoville, IL .....	09/21/2000	NAFTA-4,168	Battery packs.
Hoh River Timber (WCIW) .....	Omak, WA .....	09/21/2000	NAFTA-4,169	Wood panel products.
Tru Stitch Footwear (UFCW) .....	Malone, NY .....	09/07/2000	NAFTA-4,170	Rubber soled slippers.
Fruit of the Loom (Wkrs) .....	Harlingen, TX .....	09/21/2000	NAFTA-4,171	Blue jeans.
Ametek Aerospace (IUE) .....	Wilmington, MA .....	09/19/2000	NAFTA-4,172	Aircraft.
Caitac Manufacturing (Co.) .....	Bellingham, WA .....	09/25/2000	NAFTA-4,173	Denim jeans.
UFE (Wkrs) .....	El Paso, TX .....	09/29/2000	NAFTA-4,174	Auto parts.
Jomac Wells Lamont Industry (Wkrs) .....	Brunswick, MO .....	09/28/2000	NAFTA-4,175	Gloves.
Potlatch (Wkrs) .....	Lewiston, ID .....	09/18/2000	NAFTA-4,176	Plywood products.
Derby Industries (Co.) .....	Lexington, KY .....	09/06/2000	NAFTA-4,177	Laser printer.
Montgomery Hosiery Mill (Co.) .....	Star, NC .....	09/26/2000	NAFTA-4,178	Hosiery.
GP Timber (Co.) .....	Central Point, OR .....	09/25/2000	NAFTA-4,179	Sawlogs.
Plum Creek Timber (Co.) .....	Pablo, MT .....	09/26/2000	NAFTA-4,180	Lumber.
Ametek US Gauge (IAMAW) .....	Sellersville, PA .....	09/28/2000	NAFTA-4,181	Hardware for guage.
Fleetwood Homes of Georgia (Wkrs) .....	Douglas, GA .....	09/29/2000	NAFTA-4,182	Lumber.
Paper, Calmenson (USWA) .....	Bucyrus, OH .....	09/26/2000	NAFTA-4,183	Grader blades.
Mountaineer Precision Tool & Mold (Wkrs) .....	Waynesville, NC .....	09/27/2000	NAFTA-4,184	Injection molds.
Liberty Precision Tool (Co.) .....	Bessemer City, NC .....	09/26/2000	NAFTA-4,185	Machine parts.
Excel Finishing (Wkrs) .....	Old Fort, NC .....	09/27/2000	NAFTA-4,186	Dying & finishing cloth.
Metal Powder (Co.) .....	Logan, OH .....	09/26/2000	NAFTA-4,187	Casting.
M. Fine and Sons (Wkrs) .....	Loretto, TN .....	10/02/2000	NAFTA-4,188	Blue jeans.
Talon (Wkrs) .....	Commerce, CA .....	09/29/2000	NAFTA-4,189	Metal zippers.
Chilton Toys (PACE) .....	Seymour, WI .....	09/28/2000	NAFTA-4,190	Toys.
Cox Target Media Sales (Co.) .....	Washington, NC .....	10/02/2000	NAFTA-4,191	Carton & overwrapped samples.
ADM Milling (IBT) .....	Milwaukee, WI .....	09/28/2000	NAFTA-4,192	Milling.
MHPG (Co.) .....	Whitinsville, MA .....	09/29/2000	NAFTA-4,193	Printed t-shirts.
Wabash Automotive (Wkrs) .....	Irving, TX .....	09/29/2000	NAFTA-4,194	Slip ring.
Avery Dennison (Co.) .....	Crossville, TN .....	10/05/2000	NAFTA-4,195	Writing instruments.
Swift Denim (Co.) .....	Erwin, NC .....	10/05/2000	NAFTA-4,196	Denim fabric.
General Electric (Wkrs) .....	Erie, PR .....	10/03/2000	NAFTA-4,197	DC motor.
PPG Industries (USWA) .....	Springdale, PA .....	10/04/2000	NAFTA-4,198	Coating's and resin.
United States Sugar (IAM) .....	Clewiston, FK .....	09/19/2000	NAFTA-4,199	Sugar.
Crater Lake Potato Distributros (Wkrs) .....	Kalmaths Falls, OR .....	10/03/2000	NAFTA-4,200	Package potatoes.
Contract Apparel (Wkrs) .....	El Paso, TX .....	10/09/2000	NAFTA-4,201	Pants, wool jackets, blouses.
Samsonite (IBT) .....	Tucson, AZ .....	10/02/2000	NAFTA-4,202	Soft side luggage.
EPSC Pipay Services (Wkrs) .....	Burbank, CA .....	10/02/2000	NAFTA-4,203	Film crew.
Supply One (Wkrs) .....	K-Falls, OR .....	09/26/2000	NAFTA-4,204	Lumber.
North Powder Lumber (Wkrs) .....	North Powder, OR .....	10/06/2000	NAFTA-4,205	Studs.
Williamette Industries (WCIW) .....	Albany, OR .....	10/03/2000	NAFTA-4,206	Mouldings.
United States Leather (UFCW) .....	Omaha, NE .....	09/11/2000	NAFTA-4,207	Leather for auto seathing.
Progress Lighting (Wkrs) .....	Cowpens, SC .....	10/09/2000	NAFTA-4,208	Light fixtures.
Century II Staffing—Creighton, Inc. (Wkrs) .....	Reidsville, NC .....	10/06/2000	NAFTA-4,209	Military uniforms.
Royal Oak Charcoal (Wkrs) .....	Paris, AR .....	10/09/2000	NAFTA-4,210	Charcoal.
Tyco Electronics (Co.) .....	Clinton Township, MI .....	10/04/2000	NAFTA-4,211	Auto wiring harness
Bay Club Sportwear (Wkrs) .....	Copiague, NY .....	10/10/2000	NAFTA-4,212	Beachwear.
L and L Manufacturing (Wkrs) .....	Los Angeles, CA .....	09/30/2000	NAFTA-4,213	Women's & girl's clothing.
Gadsden Machine and Roll (Wkrs) .....	Gadsden, LA .....	10/10/2000	NAFTA-4,214	Steel production equipment.

[FR Doc. 00-26719 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration****[NAFTA-3983]****Four Seasons of Georgetown,  
Georgetown, SC; Notice of Termination  
of Investigation**

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on June 22, 2000, in response to a petition filed on the same date by a company official, on behalf of workers at Four Seasons of Georgetown, Georgetown, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of October, 2000.

**Linda G. Poole,***Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-26728 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

for workers of the subject firm. The workers were engaged in cutting fabric for the apparel industry. New information shows that worker separations occurred at the laundry facility of the subject firm and will continue until its closing in November, 2000. The workers provided laundry services supporting the cutting room operation which closed in 1999. The laundry facility workers were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to include workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room, and Laundry Facility, El Paso, Texas. The amended notice applicable to NAFTA-02847 is hereby issued as follows:

"All workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room and Laundry Facility, El Paso, Texas who became totally or partially separated from employment on or after March 22, 1999 through March 22, 2001 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 10th day of October, 2000.

**Linda G. Poole,***Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-26722 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

Workers at the subject firm were engaged in employment related to the production of stud lumber. The workers are not separately identifiable by product line.

Sales, production and employment at the Wallowa facility declined during the relevant time period; the facility closed in June 2000.

The initial investigation resulted in a negative determination because there was no shift in production to Mexico or Canada and the company did not purchase imported stud lumber from Mexico or Canada. In addition, the Department conducted a survey of major customers which revealed that customers of the subject firm were not increasing their purchases of imported stud lumber.

The customer information provided by the company in its request for administrative reconsideration, and verified by the Department, reveals that a major customer increased purchases of imported stud lumber from Canada while reducing purchases from the subject firm.

**Conclusion**

After careful review of the facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with stud lumber contributed importantly to the declines in sales or production and to the total or partial separation of workers of Wallowa Forest Products, Wallowa, Oregon. In accordance with the provisions of the Trade Act, I make the following certification:

"All workers of Wallowa Forest Products, Wallowa, Oregon who became totally or partially separated from employment on or after June 27, 1999 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, D.C. this 6th day of October 2000.

**Linda G. Poole,***Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-26721 Filed 10-17-00; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration****[NAFTA-02847]****Sun Apparel of Texas, LTD Armour  
Plant Cutting Room and Laundry  
Facility El Paso, TX; Amended  
Certification Regarding Eligibility to  
Apply for NAFTA-Transitional  
Adjustment Assistance**

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 22, 1999, applicable to workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room, El Paso, Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22649).

At the request of the State agency, the Department reviewed the certification

**DEPARTMENT OF LABOR****Employment and Training  
Administration****[NAFTA-04003]****Wallowa Forest Products, Wallowa,  
Oregon; Notice of Revised  
Determination on Reopening**

On August 22, 2000, the Department issued a Negative Determination Regarding Worker Eligibility to apply for NAFTA Transitional Adjustment Assistance applicable to workers of Wallowa Forest Products, Wallowa, Oregon. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

By letters of September 21 and October 5, 2000, the company requested administrative reconsideration regarding the Department's denial and provided information about customer purchases of imported stud lumber that the Department had not previously considered.

**MORRIS K. UDALL SCHOLARSHIP  
AND EXCELLENCE IN NATIONAL  
ENVIRONMENT POLICY FOUNDATION****Notice of Meeting**

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 8 a.m. on Thursday, November 2, 2000 at the offices of the U.S. Institute for Environmental Conflict

Resolution, 110 South Church, Ste, 3350, Tucson, AZ 85701.

The matters to be considered will include (1) A report on the U.S. Institute of Environmental Conflict Resolution, and (2) A report from the Udall Center for Studies and Public Policy; (3) Program Reports, and (4) Approval of 2001 budget. The meeting is open to the public.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher L. Helms, 110 South Church, Ste, 3350, Tucson, Arizona 85701. Telephone: (520) 670-5608.

Dated this 10th day of October, 2000.

**Christopher L. Helms,**

*Executive Director, Morris K. Udall Foundation Scholarship and Excellence in National Environmental Policy.*

[FR Doc. 00-26713 Filed 10-17-00; 8:45 am]

**BILLING CODE 6320-FN-M**

## **NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES**

### **National Endowment for the Arts; National Council on the Arts 141st Meeting**

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 15, 2000 from 9:00 a.m.-400 p.m. in Room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The meeting will be open to the public on a space available basis. Following opening remarks and announcements, there will be an update on agency appropriations and introduction of the meeting theme—The Arts & Livable Communities—and guest speaker Robert Putnam, author of *Bowling Alone: The Collapse and Revival of American Community*. Mr. Putnam's presentation will be followed by guest presentations from Indianapolis Mayor Bart Peterson and from representatives of the Mid Atlantic Arts Foundation: Alan Cooper, Abel Lopez, and Rebecca Klein. Congressional and Budget updates will follow. The meeting will also include presentations by Rick Lowe of Project Row Houses and Ken Burns on his public TV series *Jazz*. Other topics tentatively will include: Application Review for Creativity, Organizational Capacity, Literature Fellowships, and Leadership Initiatives; a briefing on the Artists in American Life Colloquia, including a report from participant David Henry Hwang; review of Guidelines for Grants to Organizations

and Literature Fellowships; and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682-5532, TTY-TDD 202/682-5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682-5570.

Dated: October 13, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Office of Guidelines and Panel Operations.*

[FR Doc. 00-26756 Filed 10-17-00; 8:45 am]

**BILLING CODE 7537-01-P**

## **NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

### **National Endowment for the Arts; Combined Arts Advisory Panel**

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

*Folk & Traditional Arts section (B)* (Access, Education, and Heritage/Preservation categories): October 30-31, 2000, Room 716. A portion of this meeting, from 1 p.m. to 2 p.m. on October 31st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on October 30th and from 9 a.m. to 1 p.m. and 2 p.m. to 5:30 p.m. on October 31st, will be closed.

*Dance section* (Access, Education, and Heritage/Preservation categories): November 6-8, 2000, Room 730. A

portion of this meeting, from 4 p.m. to 5 p.m. on November 8th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 6th and 7th, and from 9 a.m. to 4 p.m. on November 8th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: October 13, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 00-26755 Filed 10-17-00; 8:45 am]

**BILLING CODE 7537-01-M**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-368]**

### **In the Matter of Entergy Operations, Inc. (Arkansas Nuclear One, Unit 2); Exemption**

#### **I.**

Entergy Operations, Inc. (Entergy, or the licensee) is the holder of Facility Operating License No. NPF-6, which authorizes operation of the Arkansas Nuclear One, Unit 2 (ANO-2). The license provides, among other things,

that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

## II.

Title 10 of the Code of Federal Regulations (10 CFR) part 50, appendix J, Option B requires, in part, that licensees of all power reactors conduct integrated leakage rate tests (ILRT) under conditions representing design basis loss-of-coolant accident (DBLOCA) containment peak pressure. The regulation at 10 CFR 50.12 states, in part, that in order for the Commission to consider granting an exemption, special circumstances must be present.

By letter dated June 29, 2000, Entergy requested that the NRC exempt ANO-2 from the application of the specific requirements of 10 CFR part 50, appendix J, Option B. Specifically, appendix J, Option B requires that licensees of all power reactors conduct ILRTs under conditions representing DBLOCA containment peak pressure. The DBLOCA containment peak pressure at ANO-2 is 58 psig, however, Entergy would like an exemption in order to conduct the test at 68 psig. Entergy also addresses special circumstances in its June 29, 2000, application.

## III.

The ANO-2 steam generators (SGs) are scheduled for replacement during the fall of 2000. The replacement SGs (RSGs) will require that an access opening be cut in the containment building structure. Upon closure of the structure, an ILRT will be required to test for primary containment leakage integrity.

The ANO-2 containment building was originally designed and tested for an internal pressure of 54 psig. The ANO-2 containment building has recently been reevaluated, to address the containment post-accident response resulting from the RSGs, for an increase in accident pressure to 58 psig with a design pressure of 59 psig, and shown to be acceptable as discussed in a letter to the NRC dated November 3, 1999, as revised by a letter dated June 29, 2000. As a result of this increase, a structural integrity test (SIT) will be performed to evaluate the ANO-2 containment building for the change in containment design pressure. The purpose of the SIT is to verify that the containment building structure can safely carry design loads and that the structural behavior is similar to that predicted by analysis. The post-RSG SIT will be performed at 68 psig (1.15 times the revised design pressure). The licensee

desires to also perform the ILRT concurrently with the post-RSG SIT, at the SIT pressure of 68 psig, in order to recover approximately 30 hours of projected plant outage time. However, Appendix J, Option B requires that the ILRT be conducted at a pressure representing DBLOCA containment peak pressure, which is 58 psig.

Entergy cited special circumstances regarding achievement of the underlying purpose of the regulation as part of its basis for requesting this exemption [10 CFR 50.12(a)(2)(ii)]. Entergy noted in support of the 10 CFR 50.12(a)(2)(ii) criteria that the application of the current regulation is not necessary to achieve the underlying purpose of the rule. Entergy stated that the underlying purpose of 10 CFR part 50, appendix J, Option B is still achieved in that the ILRT will continue to measure the containment system's overall integrated leakage rate under conditions representing DBLOCA containment peak pressure and that leakage through the primary reactor containment will not exceed the allowable leakage rate values as specified in the Technical Specifications (TSs) or associated Bases. The 68-psig SIT pressure is performed at a pressure that is greater than the DBLOCA containment peak pressure of 58 psig. Therefore, performing the ILRT at 68 psig meets and exceeds the requirement for performing the ILRT at a pressure representing the DBLOCA containment peak pressure (58 psig). In addition, meeting the TS requirement for acceptable leakage at a higher test pressure is conservative and well within the intent of appendix J, Option B. Entergy concluded that the above information demonstrates that there is reasonable assurance that performing the post-RSG ILRT at the SIT test pressure of 68 psig will provide continued validation of the leak integrity of the containment structure.

Entergy also cited additional special circumstances as part of its basis for requesting this exemption, namely that compliance would result in undue costs [10 CFR 50.12(a)(2)(iii)]. Entergy stated that the proposed exemption meets the criteria for special circumstances in 10 CFR 50.12(a)(2)(iii) in that approximately 30 hours of plant outage time could be recovered, resulting in substantial savings. Entergy added that since performance of the ILRT at the SIT pressure is conservative, they believe that realizing this benefit is acceptable.

## IV.

The NRC staff has reviewed the licensee's application. Regarding assurance of safe operation, the staff

finds that since the use of the higher SIT pressure is conservative and since the licensee will be following the applicable regulations and guidance for performing the ILRT, the use of the SIT pressure for the ILRT is technically acceptable. Regarding compliance with 10 CFR 50.12(a)(2)(ii), the staff finds that since the licensee will still perform an ILRT, and it will be performed at a pressure which is conservative with respect to that required by 10 CFR part 50, Appendix J, Option B, the underlying purpose of the rule, to ensure an essentially leak tight containment, is satisfied and this special circumstance applies. Regarding compliance with 10 CFR 50.12(a)(2)(iii), the staff disagrees that this special circumstance applies. Since ANSI/ANS 56.8-1994 (section 5.4) recognizes the situation in which an ILRT is performed after an SIT, this situation cannot be considered as an undue hardship or a burden significantly in excess of that which might be incurred by other licensees in similar circumstances. The staff's detailed Safety Evaluation (and this exemption) are enclosures in the letter to the licensee dated

## V.

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Entergy Operations, Inc. a one-time exemption from the requirements of 10 CFR part 50, appendix J, Option B in order to provide a one-time allowance to conduct the containment ILRT at the same pressure that is used for the SIT.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (65 FR 59216, dated October 4, 2000).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th October, 2000.

For the Nuclear Regulatory Commission

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-26761 Filed 10-17-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Office of Nuclear Material Safety and Safeguards; In the Matter of Department of Energy, (Savannah River High-Level Waste Tanks); Response to NRDC Petition

#### I. Introduction

On July 28, 1998, the Natural Resources Defense Council (NRDC) submitted a petition to the U.S. Nuclear Regulatory Commission (NRC) requesting that NRC “. . . assume and exercise immediate licensing authority over all high-level radioactive waste (HLW) that is stored in the 51 underground tanks located on the Department of Energy’s (DOE) Savannah River Site (SRS).” NRC published receipt of the petition in the **Federal Register** on September 4, 1998 (63 FR 47333). On September 30, 1998, DOE’s General Counsel responded to NRDC’s petition. On October 23, 1998, NRDC responded to DOE’s reply.

On March 6, 2000, NRDC sent a letter to Chairman Richard A. Meserve asking for a public meeting to discuss the Savannah River tank closure program and to consider the points NRDC raised in its petition. The NRDC letter also stated that the NRC should initiate formal rulemaking if the Commission agreed with the NRC staff’s position in SECY 99–284 (December 15, 1999).<sup>1</sup>

NRDC, in submitting this petition, expressly stated that it did not seek to have the petition addressed under the procedures of 10 CFR 2.206, “Requests for Action under This Subpart.”<sup>2</sup> However, it requested the Commission to exercise its authority to take regulatory action. This petition was considered under the Commission’s general authority to address issues associated with its jurisdiction.<sup>3</sup>

By letter dated August 27, 1998, the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) informed the petitioner that immediate action was not warranted for a number of reasons, including: (1) NRC does not perceive any immediate threat to the

public health and safety from DOE’s management of the SRS tank farm; (2) DOE is actively monitoring the condition and safety of the tanks; and (3) DOE has agreed not to close any more tanks, pending the NRC staff’s completion of its review of DOE’s waste classification methodology. The Director, NMSS, informed NRDC that the NRC staff would not respond to the petition until it completed its review of DOE’s classification methodology.<sup>4</sup>

#### II. Discussion

##### A. NRC’s Jurisdiction

NRC has limited licensing authority over DOE activities. With the dissolution of the Atomic Energy Commission in 1975, NRC was given licensing and related regulatory responsibilities for only four types of facilities within the Energy Research and Development Administration (ERDA) (now DOE). Two types of facilities are relevant to HLW issues. Specifically, Section 202(3) of the Energy Reorganization Act (ERA) addresses facilities used primarily for the receipt and storage of HLW resulting from activities licensed under the Atomic Energy Act. Section 202(4) addresses “. . . facilities authorized for the express purpose of subsequent long term storage of high-level radioactive waste generated by the Administration [now DOE], which are not used for, or part of, research and development activities.” (Emphasis added.)

Section 202(3) is not relevant here because Savannah River does not possess wastes from licensed activities. Section 202(4) would be relevant if: (1) the DOE facility at Savannah River was for storing high-level waste for the long term; and (2) such facility was “authorized for the express purpose of subsequent storage of high-level radioactive waste.” The HLW at Savannah River is from defense activities. DOE intends the tanks to be closed in place. It has no intent to recover the residual waste for future use, processing, or disposal. The burial of any residual material in the tanks on site is, in essence, disposal. However, for purposes of the ERA, the Commission has interpreted the term “storage” to include disposal.<sup>5</sup>

Assuming the residual material is HLW, to resolve the question of NRC jurisdiction requires a determination as to whether the tanks have been expressly authorized for long-term storage of HLW.<sup>6</sup>

This issue was raised before the Commission in the late 1970s in a petition filed by NRDC. The NRDC petition requested that NRC license the tanks at Savannah River. The Commission, after reviewing the legislative history for Section 202(4)<sup>7</sup> and past authorization acts, could not find that these tanks were “. . . authorized for the express purpose of subsequent long term storage.” The Commission concluded that it had no jurisdiction because the tanks, at the time, were intended for interim storage and had not been authorized for long-term storage. [*In the Matter of NRDC, “Request Concerning ERDA High-Level Waste Storage Facilities,”* CLI 77–9, 5 NRC 550 (1977).] Based on the legislative history, the Commission also concluded that Congress “had in mind” that Section 202(4) would apply to facilities not in existence in 1974 when the ERA was enacted.<sup>8</sup> However, the Commission opined that Section 202(4) could apply to facilities constructed before 1974, if they were subsequently

Reorganization Act to include disposal.” “Disposal of High-Level Radioactive Wastes in Geologic Repositories: Licensing Procedures,” 46 FR 13971, Footnote 1 (February 25, 1981). See also 10 CFR 60.102(b)(3). This is different from the Nuclear Waste Policy Act of 1982 (NWPA), Public Law 97–425, 96 Stat. 2201, 42 U.S.C. 10101, et seq., which, in Section 25, defines “storage” to mean retention of HLW with the intent to recover it for future use, processing, or disposal.

<sup>6</sup> See Footnote 2, “Denial of Rulemaking Petition,” 58 FR 12346, where the Commission said that the contents of the waste in the Hanford tanks are not dispositive of the question of whether the storage of the treated wastes is subject to NRC licensing.

<sup>7</sup> The Senate Committee on Government Operations explained that Section 202(4) provides NRC “. . . with the authority and responsibility for licensing and related regulation of retrievable surface storage facilities and other facilities for high-level radioactive wastes which are or may be authorized by the Congress. . . for long-term storage. . . . It is not the intent of the Committee to require licensing of such storage facilities which are already in existence. . . .” Committee on Government Operations, Senate Report 93–980, at 59 (June 27, 1974) (emphasis added). The Conference Report explained that it retained the Senate language for Section 202(4) and also noted that facilities for long-term storage were not in existence. [Conference Report HR 93–1445 (October 8, 1974).]

<sup>8</sup> There are 51 underground storage tanks at Savannah River. Eighteen of these tanks were constructed after the passage of the ERA. DOE maintains that none of these tanks was expressly authorized for long-term storage of HLW. Letter from Mary Anne Sullivan, General Counsel, DOE, to John Greeves, Director, Division of Waste Management, NRC, “NRDC Petition to Exercise Licensing Authority Over Savannah River Site High-Level Waste Tanks,” September 30, 1998.

<sup>1</sup> SECY 99–284, “Classification of Savannah River Residual Tank Waste,” December 15, 1999, addressed NRC staff views on DOE’s methodology for classifying incidental waste at SRS.

<sup>2</sup> NRDC stated: “This petition does not call for NRC to exercise an enforcement or other judicially un-reviewable discretionary action within the meaning of 10 CFR 2.206 or the holding in *Hechler v. Chaney*, 470 US 821 (1985).”

<sup>3</sup> In light of the specific request of the petitioner in the July 28, 1998 petition, this petition was not treated as a petition submitted under 10 CFR 2.206, notwithstanding the petitioner’s March 6, 2000 letter referring to the petition as “its 2.206 petition.”

<sup>4</sup> The staff has completed its review, and has transmitted the results to DOE. See letter from W.F. Kane/NRC to R. Schepens/DOE-SRS, dated June 30, 2000.

<sup>5</sup> The ERA does not define the term “storage.” The ERA does not explicitly give NRC jurisdiction over the disposal of HLW. However, the Commission, in 1981, when it promulgated 10 CFR part 60, “Disposal of High-Level Wastes in Geologic Repositories,” asserted that, “[T]he Commission interprets ‘storage’ as used in the Energy

expressly authorized for long-term storage.<sup>9</sup> [*Id.* at 554.]<sup>9</sup>

In seeking judicial review of the Commission's decision denying the NRDC's petition, the NRDC argued that the question of whether the tanks are expressly authorized for long-term storage turns on the likelihood that the tanks will be used for long-term storage rather than whether Congress or the ERDA actually authorized them. The Court rejected that view stating:

Had Congress desired to base NRC licensing jurisdiction on a factual determination of the probability that particular ERDA waste storage facilities would for reasons of necessity or otherwise, be used for long-term storage, it would have enacted a statute significantly different from that before us. Instead, Congress chose to give NRC licensing jurisdiction when such facilities are "authorized for the express purpose of subsequent long-term storage." 42 U.S.C. 5842(4). Although the parties suggest that some ambiguity exists concerning who must give the required authorization, Congress or ERDA, neither authorized the . . . tanks for long-term storage. [*NRDC v. USNRC*, 606 F2d 1261, 1267 (D.C. Cir.1979).]

In light of its finding that neither the ERDA nor the Congress had expressly authorized the tanks for long-term storage, the Court did not resolve this suggested ambiguity. The purpose of Section 202 of the ERA was to give NRC new authority over ERDA. However, this was limited authority as the new authority only extended to certain ERDA activities. Senate Report 93-980 is clear that Congress was to make the authorization. Given that it was the Senate language that was adopted in the final bill, its views are instructive. Moreover, there is no evidence in the legislative history to suggest that Congress intended the ERDA to have the discretion to decide for itself which facilities would be authorized for long-term storage and, therefore, licensed by NRC. It does not seem reasonable that Congress would have intended that result given the purpose of Section 202 to establish licensing requirements for certain ERDA facilities. Following the logic of the Court of Appeals, if Congress intended that the ERDA could have provided the authorization, significantly different language would have been used.

Thus, absent express Congressional authorization, NRC does not have jurisdiction over defense HLW stored at Savannah River. Since the enactment of the ERA, there has not been an express authorization for long-term storage of HLW at Savannah River. Congress has repeatedly authorized funds for interim

storage at Savannah River and funds for removal of HLW from filled waste tanks. With one exception, there has not been a reference to long-term storage at Savannah River. The exception—Section 3141 of the National Defense Authorization Act for Fiscal Year 1997 [Public Law 104-201, 110 Stat. 2422 (1996)]—directed that the Secretary of Energy accelerate the schedule for isolation of HLW in glass containers if the Secretary found, among other things, that it " . . . could accelerate the removal and isolation of high-level waste from long-term storage tanks at the [Savannah River] site." Although this is a recognition that there is, and is likely to be, lengthy storage at Savannah River, this language is not an authorization for the " . . . express purpose of subsequent long-term storage." If anything, it is an indication from Congress that it does not desire long-term storage of HLW at Savannah River. In sum, although Congress is aware that DOE is in the process of removing HLW from the storage tanks at Savannah River, it has not expressly authorized the long-term storage of any residual HLW in those tanks.

Apart from the ERA, NRC has authority to license DOE's repositories for disposal of HLW arising out of defense activities. Section 8(b)(3) of the NWPA provides that any repository for the disposal of HLW resulting from atomic energy defense activities is to be licensed under Section 202 of the ERA and is to be subject to the Commission's requirements. Section 2(18) of the NWPA defines a "repository" to mean "permanent deep geologic disposal. . . ." Although the HLW at Savannah River is defense waste, it is not stored nor disposed of, nor intended to be stored or disposed of in a repository as that term is used in the NWPA.<sup>10</sup> Therefore, the NWPA is not a source for NRC jurisdiction over the Savannah River tanks.

### B. Incidental Waste

As to the issue of incidental waste raised by NRDC, NRC has in the past recognized the concept of incidental waste. For example, in a response to a rulemaking petition involving Hanford, the Commission concluded that the reprocessed wastes would be "incidental waste" and not HLW, based on DOE's assurances that the wastes:

<sup>10</sup> Neither the NWPA nor 10 CFR Part 60 requires HLW to be disposed of in a geologic repository. Should future reprocessing of commercial fuel occur, 10 CFR Part 50, Appendix F, would require the resulting HLW to be transferred to a Federal repository. See also, the 1987 advance notice of proposed rulemaking to define HLW, 52 FR 5992, 5993 (February 27, 1987).

(1) have been processed (or will be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical;

(2) will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR Part 61; and

(3) are to be managed, pursuant to the Atomic Energy Act, so that safety requirements comparable to the performance objectives set out in 10 CFR part 61, subpart C, are satisfied.<sup>11</sup>

NRC recognizes that the residual waste at Savannah River is different from the waste at Hanford. The residual waste at Savannah River generally consists of waste that is left on the bottom of the tanks and that is embedded in pits in the tank walls; at Hanford, the waste consists of the low-activity fraction resulting from pretreatment. Importantly, the waste at Hanford was not greater than Class C. At Savannah River some of the residual waste, if subject to 10 CFR part 61, would be classified, in accordance with 10 CFR 61.55, as greater than Class C. The Commission's regulations at 10 CFR 61.58 reserve the discretion to allow material to be treated as not greater than Class C if the requirements of 10 CFR part 61, Subpart C, are met. However, in light of the lack of NRC jurisdiction over the SRS tanks, NRC has not adopted a position as to whether the residual waste DOE seeks to classify as "incidental waste" in these tanks is considered HLW.

NRC has provided technical assistance, from a safety perspective, on DOE's methodology for classifying waste as "incidental." In the June 30, 2000, letter, the NRC staff stated:

Based on the information provided, the staff has concluded that the methodology for tank closure at SRS appears to reasonably analyze the relevant considerations for Criterion One and Criterion Three of the three incidental waste criteria. DOE would undertake cleanup to the maximum extent that is technically and economically practical, and would demonstrate it can meet performance objectives consistent with those required for disposal of low-level waste. These commitments, if satisfied, should serve to provide adequate protection of public health and safety. . . . The NRC staff, from a safety perspective, therefore does not disagree with DOE-SR's proposed methodology, contingent upon DOE reaching current goals for bulk waste removal, as well as water and chemical washing, such that the performance objectives stated in subpart C 10 CFR 61 are met. . . .

The staff's technical advice does not mean that NRC has decided that the material left in the tanks is incidental

<sup>9</sup> As noted below, there have not been any subsequent Congressional authorizations.

<sup>11</sup> *Id.* at 12345.



waste. The results of the NRC staff review were provided as input to the DOE decision. DOE is responsible for determining whether the residual tank waste can be classified as incidental.<sup>12</sup>

### III. Conclusion

NRC has provided technical assistance, from a safety perspective, on DOE's methodology for classifying waste as "incidental." NRC staff has concluded that DOE's commitments to (1) clean up to the maximum extent technically and economically practical, and (2) meet performance objectives consistent with those required for disposal of low-level waste, if satisfied, should serve to provide adequate protection of public health and safety.

NRC does not have licensing and related regulatory authority over the HLW or residual wastes in the tanks at Savannah River. The authority and responsibility for classifying the waste at Savannah River reside in DOE, not NRC. Therefore, the issues underlying the petition should be directed to DOE.

Dated at Rockville, Maryland, this 2nd day of October, 2000.

For the Nuclear Regulatory Commission.

**William F. Kane,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00-26762 Filed 10-17-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Reactor Oversight Process Initial Implementation Evaluation Panel Meeting Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94-463, Stat. 770-776) the U.S. Nuclear Regulatory Commission (NRC), on October 2, 2000, announced the establishment of the Reactor Oversight Process Initial Implementation Evaluation Panel (IIEP). The IIEP will function as a cross-disciplinary oversight group to independently monitor and evaluate the results of the first year of implementation of the Reactor Oversight Process (ROP). A Charter governing the IIEP functions as a Federal Advisory Committee is being filed on October 16, 2000, after consultation with the Committee Management Secretariat, General

Services Administration. The IIEP will hold its first meeting on November 1-2, 2000, in Conference Room T-8A1, Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland.

*The IIEP meeting participants are listed below along with their affiliation:*

A. Randolph Blough—U.S. Nuclear Regulatory Commission  
R. William Borchardt—U.S. Nuclear Regulatory Commission  
Kenneth Brockman—U.S. Nuclear Regulatory Commission  
Steve Floyd—Nuclear Energy Institute  
David Garchow—PSEG Nuclear LLC  
Richard Hill—Southern Nuclear Operating Company  
Rod Krich—Commonwealth Edison Company  
Robert Laurie—California Energy Commission  
David Lochbaum—Union of Concerned Scientists  
James Moorman, III—U.S. Nuclear Regulatory Commission  
Loren Plisco—U.S. Nuclear Regulatory Commission  
Steven Reynolds—U.S. Nuclear Regulatory Commission  
A. Edward Scherer—Southern California Edison Company  
James Setser—Georgia Department of Natural Resources  
James Trapp—U.S. Nuclear Regulatory Commission

*A tentative agenda of the meeting is outlined as follows:*

November 1, 2000

1:00-1:20—Welcome & Opening Remarks  
—Introduction of Committee Members  
1:20-1:40—Role of Independent Advisory Committees  
1:40-2:00—Legal Requirements of FACA Committees  
2:00-3:00—IIEP Charter  
—Discussion of Proposed Bylaws  
3:00-3:15—Break  
3:15-3:30—Administrative Support for FACA Committee  
3:30-3:45—Lessons Learned and Best Practices from the Pilot Program Evaluation Panel  
3:45-4:00—Current Status of the Reactor Oversight Process  
4:00-5:00—Overview of Staff Performance Measures

Thursday, November 2, 2000

8:00-10:15—Detailed Discussion of Staff Performance Measures  
10:15-10:30—Break  
10:30-12:00—Detailed Discussion of Staff Performance Measures  
12:00-12:45—Lunch  
12:45-3:15—IIEP Discussion on Acceptability of Staff Performance Measures  
3:15-3:30—Break  
3:30-4:30—Agenda Planning

Meetings of the IIEP are open to the members of the public. Formal procedures for the conduct of the Panel meetings will be developed during the November 1-2, 2000 meeting. In the interim, at the November 1-

2, 2000, meeting, oral or written views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Loren R. Plisco (Telephone 404/562-4501, e-mail LRP@nrc.gov) or Mr. John D. Monninger (Telephone 301/415-3495, e-mail JDM@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Loren R. Plisco or Mr. John D. Monninger between 8:00 a.m. and 4:30 p.m. EDT.

IIEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page when a web site for the IIEP is established.

Dated: October 12, 2000.

**Andrew Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00-26760 Filed 10-17-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards

#### Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 31, 2000, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, October 31, 2000—1:00 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the

<sup>12</sup> DOE has promulgated an order, DOE 435.1, "Radioactive Waste Management," (July 9, 1999), that addresses, among other things, the classification of waste as incidental and not HLW. NRDC has challenged DOE's use of incidental waste. [NRDC and Snake River v. DOE, No. 00-70015 (May 22, 2000).]



concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 12, 2000.

**James E. Lyons,**

*Associate Director for Technical Support,  
ACRS/ACNW.*

[FR Doc. 00-26758 Filed 10-17-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant Systems; Notice of Meeting

The ACRS Subcommittee on Plant Systems will hold a meeting on October 31, 2000, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, October 31, 2000—8:30 a.m. until 12:00 noon.*

The Subcommittee will discuss the safety evaluation reports on the topical reports for ABB/CE and Siemens Digital I&C Applications. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will

be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415-6899) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 6, 2000.

**James E. Lyons,**

*Associate Director for Technical Support.*

[FR Doc. 00-26759 Filed 10-17-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and

make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 25, 2000, through October 6, 2000. The last biweekly notice was published on October 4, 2000.

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC through September 22, 2000. The NRC is relocating its Public Document Room to the NRC's headquarters building. Effective September 26, 2000, documents may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 17, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of amendment request:* August 9, 2000.

*Description of amendment request:* The proposed amendment revises Sections 6.5.3 and 6.5.4 of the Technical Specifications to eliminate reference to the Independent Onsite Safety Review

Group (IOSRG) and to redefine the performance of the IOSRG function by the nuclear quality assurance organization.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected by any of the proposed changes. The proposed changes do not alter the design, function, or operation of any plant component. Therefore, the proposed amendment does not affect the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not affect assumptions contained in the plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license, or Technical Specifications that preserve safety analysis assumptions. The proposed changes do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed changes do not alter the design, function, or operation of any plant components. Therefore, the proposed amendment does not affect the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected. Therefore, the proposed amendment does not reduce the margin of safety.

Based upon the analysis provided herein [the licensee's August 9, 2000 application], the proposed changes will not increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any

accident previously evaluated, or involve a reduction in a margin of safety. The performance of safety assessment and the IOSRG functions by a single qualified organization will lead to efficiencies in the performance of both functions. The training and qualification of the personnel performing the IOSRG functions will be unchanged from the current requirements. Therefore, the proposed changes meet the requirements of 10 CFR 50.92(c) and involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23-1, Philadelphia, PA 19103.

*NRC Section Chief:* Marsha Gamberoni.

*AmerGen Energy Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of amendment request:* August 9, 2000.

*Description of amendment request:* The proposed amendment revises the Three Mile Island Nuclear Station, Unit 1 (TMI-1), Updated Final Safety Analysis Report (UFSAR), Section 14.1.2.10, "Steam Generator Tube Failure Analysis," to include the dose resulting from the postulated post-accident steam release through the main steam safety valves. The revised dose for the TMI-1 steam generator tube failure analysis would be increased above the values previously reviewed and approved by the NRC, but would continue to be below the limits in Title 10 of the Code of Federal Regulations (10 CFR) Part 100. The proposed change to the UFSAR modifies the existing analysis to account for release of radioactivity to the atmosphere for the postulated tube rupture analysis. The existing dose calculations do not account for this release. Editorial and grammatical corrections are also made.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the

consequences of an accident previously evaluated. This change has no effect on structures, systems or components prior to the postulated steam generator tube failure accident or any other accident. The proposed change corrects the existing UFSAR Steam Generator Tube Failure accident analysis to account for the release to atmosphere through the main steam safety valves (MSSVs). The resulting revised radiological consequences for the postulated Steam Generator Tube Failure accident remain well below the 10 CFR 100 limits.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. This change has no impact on any plant structures systems or components. The only impact is the revised radiological consequences of the Steam Generator Tube Failure accident analysis to account for the release to atmosphere through the MSSVs. This change only corrects the existing TMI Unit 1 UFSAR.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. No change to any plant structure, system or component is being made or proposed by this change. This change does not involve any change to safety system setpoints for operation. The revised radiological consequences of the Steam Generator Tube Failure accident analysis remain well below 10 CFR 100 limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23-1, Philadelphia, PA 19103.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 14, 2000.

*Description of amendments request:* The proposed amendment revises the Unit 1 and Unit 2 heatup curves (Technical Specification Figures 3.4.3-1) and Unit 1 and Unit 2 cooldown curves (Technical Specification Figures 3.4.3-2) to increase the allowable heatup and cooldown rates. Use of stress intensity factor  $K_{IC}$ , permitted by American Society of Mechanical Engineers (ASME) Code Case N-640,

made it possible to increase the heatup and cooldown rates without changing existing pressure-temperature (P-T) limits. The existing P-T limits were approved previously. Application of Code Case N-640 to generate P-T curves is not currently permitted by the regulations. Therefore, pursuant to 10 CFR 50.12, a separate request for an exemption to use Code Case N-640 was submitted in a letter dated September 14, 2000.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

In accordance with 10 CFR Part 50, Appendix G, the Calvert Cliffs pressure/temperature (P-T) limits for material fracture toughness requirements of the reactor coolant pressure boundary materials were developed using the methods of linear elastic fracture mechanics and the guidance found in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III, Appendix G. The Calvert Cliffs P-T limits are based on fluence level. The fluence levels are determined in the same manner as the pressurized thermal shock (PTS) screening criteria defined in 10 CFR 50.61 for the critical elements. Methods described in the Nuclear Regulatory Commission Regulatory Guide 1.99, Revision 2, are used to predict the embrittlement effect of neutron irradiation on reactor vessel materials. Regulatory Guide 1.99 defines embrittlement effect in terms of adjusted reference temperatures, which depends on the material property of the PTS critical elements.

The proposed higher heatup and cooldown rates for the Technical Specification P-T limits were made possible by the ASME Code Case N-640 which permits use of reference stress intensity factor  $K_{IC}$ , in place of  $K_{IA}$ . Use of  $K_{IC}$  for the maximum stress intensity factor that will not lead to failure, is the correct value to use. Although conservative in terms of developing P-T limits, use of  $K_{IA}$  results in a very restrictive heatup and cooldown rate that challenges plant safety. To bound the existing LTOP [low-temperature overpressure protection] enable temperatures, while increasing the heatup and cooldown rates, the criteria described in ASME Section XI Code Case 514 is used. Code Case 514 is listed in Regulatory Guide 1.147 as acceptable to the Nuclear Regulatory Commission (NRC) for this application. With the new higher heatup and cooldown rates, the underlying intent of the 10 CFR Part 50, Appendix G, requirement for adequate margin to prevent brittle failure of the reactor coolant pressure boundary materials is maintained. Additionally, since the cooldown rates are not changed above 300° F, the safety analyses and dose consequences

in the Updated Final Safety Analysis Report are not affected.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident previously evaluated.

The implementation of the proposed revision has no significant effect on either the configuration of the plant, or the manner in which it is operated.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

As discussed above, although conservative in terms of developing P-T limits, use of  $K_{IA}$  results in a very restrictive heatup and cooldown rate that challenges plant safety. The insignificant margin reduction in P-T limits is more than compensated by the safety benefits that are realized in terms of plant component integrity as a result of the higher heatup and cooldown rates. With the proposed change, the underlying intent of the 10 CFR Part 50, Appendix G, requirement for adequate margin to prevent brittle failure of the reactor coolant pressure boundary materials is maintained, and there is a net gain in overall plant safety margin.

Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 14, 2000.

*Description of amendments request:*

The proposed amendment adds two analytical methods to the list of approved core operating limits analytical methods in the Technical Specifications (TSs) for Calvert Cliffs, Unit Nos. 1 & 2. In a letter dated March 16, 2000, from Mr. S. A. Richards, NRC to Mr. I. C. Rickard, ABB Combustion Engineering, the Nuclear Regulatory Commission approved the Topical Report CENPD-387-P, "ABB Critical Heat Flux Correlations for [pressurized-water reactor] PWR Fuel" for referencing in licensing applications for

Asea Brown Boveri, Inc. Combustion Engineering, Inc. (ABB-CE) plants.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change allows the use of the ABB-NV and ABB-TV CHF [critical heat flux] correlations in the thermal hydraulic analysis for Calvert Cliffs Nuclear Power Plant. The ABB-NV is used for a non-mixing vane fuel assembly and the ABB-TV correlations are used for Turbo mixing vane fuel assembly. The CHF correlations determine the departure from nucleate boiling ratio (DNBR). The specified acceptable fuel design limit for DNBR will change for ABB-NV and ABB-TV. The use of the ABB-NV and/or ABB-TV correlations with the appropriate DNBR limit provides additional operating margin for those analyses that presently use the CE-1 correlation.

The use of a different CHF correlation will not increase the probability of an accident because the plant systems will not be operated outside of design limits, the plant equipment will not be operated in a different manner, and system interfaces will not change.

As Turbo fuel is introduced to reactor, transition cores will exist in which Turbo mixing vane grid fuel assemblies are co-residents with non-mixing vane grid fuel assemblies. The grid hydraulic loss coefficient in the Turbo grids is greater than the grid hydraulic loss coefficient for the non-mixing grids. The flow diversion that will result does not increase the probability of an accident previously evaluated because assembly flow has no impact on accident initiators, and because plant systems will not be operated outside of design limits, plant equipment will not be operated in a different manner, and system interfaces will not change.

The change in the CHF correlation was the subject of Topical Report CENPD-387-P-A, which was reviewed and approved by the NRC. The use of a different CHF correlation will not increase the consequences of an accident because Limiting Conditions [for] Operation (LOCs) will continue to restrict operation to within the regions that provide acceptable results, and Reactor Protection System (RPS) trip setpoints will plant transients so that the consequences of accidents will be acceptable.

The transition cores that will exist as Turbo fuel is introduced to the reactor will not increase the consequences of an accident. The TORC code accurately predicts the flow conditions in adjacent fuel bundles that contain grids with different designs and coefficients. The flow diversion will be compensated for by DNBR margin gains. Operation within the LOCs and RPS setpoints will continue to restrict plant

transients so that consequences of accidents will be acceptable.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not cause any existing equipment to become an accident initiator. The Turbo grid design does not introduce features that could initiate an accident.

Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

Safety Limits ensure that specified acceptable fuel design limits are not exceeded during steady state operation, normal operational transients, and anticipated operational occurrences. One of the safety limits that accomplishes this is the DNBR limit. The CHF correlations that have been approved for ABB-NV and ABB-TV result in a DNBR limit that provides a 95% probability, at a 95% confidence, that the hot fuel rod in the core will not experience departure from nucleate boiling. The RPS in combination with the LCOs, will continue to prevent any anticipated combination of transient conditions for reactor coolant system temperature, pressure and thermal power level that would result in a violation of the Safety Limits.

Therefore the margin of safety is not significantly reduced by this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 14, 2000.

*Description of amendments request:* Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI) proposed an amendment to incorporate changes described below

into the Technical Specifications (TSs) for Calvert Cliffs Units 1 and 2.

On September 9, 1996, a final rule amending 10 CFR 50.55a was issued requiring owners to implement, by September 9, 2001, the requirements of the 1992 Edition through the 1992 Addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI, Subsections IWE and IWL, as modified and supplemented by 10 CFR 50.55a. CCNPPI has developed a program to effect the implementation of Subsections IWE and IWL. This submittal requests a license amendment in support of the program.

The TSs change replaces the reference to Regulatory Guide (RG) 1.35 with a reference to Section XI of the ASME Code, and deletes the applicability of Surveillance Requirement 3.0.2. Compliance with RG 1.35 is not sufficient to comply with 10 CFR 50.55a, as amended, and inspection frequencies will be in accordance with Subsection IWL of Section XI; therefore, Surveillance Requirement 3.0.2 will no longer apply.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Containment Building is a passive safety structure that prevents the release of radioactive materials to the environment in post-accident conditions. The proposed Technical Specification change updates requirements of the Technical Specifications that have been made obsolete by the improvements of the Containment [B]uilding inspections required by the changes in the regulations. The improved inspections required by the American Society of Mechanical Engineers [Boiler and Pressure Vessel] Code serve to maintain containment response to accident conditions, by causing the identification and repair of defects in Containment Buildings.

Relocating existing requirements, eliminating requirements that duplicate regulations, and making administrative improvements provide Technical Specifications that are easier to use. Because existing requirements are controlled by regulation, there is no reduction in commitment and adequate control is still maintained. Therefore, the proposed change would not involve a significant increase in probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The Containment Building is a passive safety structure designed to contain

radioactive materials released from the reactor coolant system. The performance of the Containment Building is not evaluated as the causal factor in any accident at Calvert Cliffs Nuclear Power Plant. The proposed Technical Specification change updates requirements of the Technical Specifications that were made obsolete by the improvements of the Containment [B]uilding inspections required by the changes in the regulations. Revising the Technical Specifications, to comply with current regulations and to eliminate duplication of requirements, does not create the possibility of a new or different [kind] of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the Containment Building is to provide a boundary to the release of radioactive material to the environment during post-accident conditions. The change to the Technical Specifications incorporate[s] improved inspection techniques and criteria to ensure optimum containment integrity and, therefore, optimum containment response in the event of an accident resulting in a release of radioactive material from the reactor coolant system. Optimizing containment integrity will result in maintaining the margin of safety allowed by the Containment Buildings. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 15, 2000.

*Description of amendments request:* The proposed amendment revises the Unit 1 and Unit 2 Technical Specification Surveillance Requirement (SR) 3.1.7.2 which verifies that each control element assembly (CEA) not fully inserted is capable of full insertion when tripped from at least the 50 percent withdrawn position. Specifically, the proposed amendment adds a note to SR 3.1.7.2, which allows the SR to not be performed during initial power escalation following a refueling outage if SR 3.1.4.6 (CEA drop time test) has been met. In addition, "once" was added to the SR frequency

as an administrative change to clarify that the SR is only performed once and not on a periodic basis. This proposed license amendment is consistent with Technical Specification Task Force (TSTF)-134, Revision 1, which received Nuclear Regulatory Commission (NRC) approval on April 21, 1998.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

A risk assessment was performed to support a prior license amendment request submitted to change Surveillance Requirement (SR) 3.1.7.2 frequency from 24 hours to 7 days. Results of a study performed in support of the risk assessment indicated no change in the geometry of those components utilized in control element assembly (CEA) insertion over the 7-day period. The study also evaluated electronic/electrical failures that could cause a CEA to be stuck, concluding that the feature that controls the movement of the CEAs is not time-related. Since there have been no modifications performed on the components analyzed or changes in the manner in which they are operated, it is reasonable to assume that the conclusions remain valid.

The CEA drop time test SR 3.1.4.6 proves that any work done during the refueling outage does not prevent the rods from tripping. Revising SR 3.1.7.2, such that it could allow more than seven days from successfully performing the CEA drop time test does not change this. However, as with any component, there will eventually be some time-related degradation that may impact the ability of the CEAs to drop. Thus, when the seven days are exceeded, there is some negligible increase in the probability that a rod would fail to drop. This causes an insignificant increase in core damage frequency because it requires multiple rod failures to cause core damage in the event of an overcooling event (the most bounding accident for a stuck CEA during rod worth testing). This additional risk is believed to be small since the degradation is the result of core changes, which occur slowly, and not the result of maintenance. Thus the risk increase due to this Technical Specification change is considered to be negligible. The probability of an overcooling event is not changed by the proposed change.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change to the surveillance requirement for CEA trippability does not result in any change to the facility or the manner in which it is operated.

Therefore, this proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

Operation of the facility in accordance with this proposed amendment does not involve a significant reduction in a margin of safety. Control element assembly trippability is still demonstrated via performance of SR 3.1.4.6. The risk increase due to this change is considered to be negligible. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to provide reasonable assurance that the equipment can perform its assumed safety function.

Furthermore, this change is consistent with Technical Specification Task Force (TSTF)-134, Revision 1, which has been approved by the Nuclear Regulatory Commission. Adopting testing practices consistent with those specified in TSTF-134, Revision 1 are acceptable based on similar design, like-component testing for the system application and the availability of other Technical Specification requirements which provide regular checks to ensure limits are met.

Therefore, this proposed modification does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* August 1, 2000.

*Description of amendment request:* The proposed amendments would provide revised spent fuel pool configurations, revised spent fuel pool storage criteria, and revised fuel enrichment and burnup requirements which take credit for soluble boron in maintaining acceptable margins of subcriticality in the spent fuel storage pools. Also, the proposed amendments would provide additional criteria for ensuring acceptable levels of subcriticality in the spent fuel storage pools.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequence of an accident previously evaluated?

No, based upon the following:

#### Dropped Fuel Assembly

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pools when considering the degradation of the or Boraflex panels in the spent fuel pool racks coupled with the presence of soluble boron in the spent fuel pool water for criticality control. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water, and the quantity of Boraflex remaining in the racks has no effect on the probability of such a drop accident.

The criticality analysis showed that the consequences of a fuel assembly drop accident in the spent fuel pools are not affected when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron.

#### Fuel Misloading

There is no significant increase in the probability of the accidental misloading of spent fuel assemblies into the spent fuel pool racks when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for criticality control. Fuel assembly placement and storage will continue to be controlled pursuant to approved fuel handling procedures to ensure compliance with the Technical Specification requirements. These procedures will be revised as needed to comply with the revised requirements which would be imposed by the proposed Technical Specification changes. Note that the proposed amendment would increase the number of different storage limits in Technical Specification 3.7.15. However, these revised storage limits were developed with input from station personnel. Their awareness, in conjunction with any procedure changes as described above, will provide additional assurance that an accidental misloading of a spent fuel assembly will not occur.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks because criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading if the pool contains an adequate soluble boron concentration. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools. A McGuire Station UFSAR change will revise Chapter 16, "Selected Licensee Commitments", to provide for adequate monitoring of the remaining Boraflex in the spent fuel pool racks. If that monitoring identifies further reductions in the Boraflex panels which would not support the conclusions of the McGuire Criticality Analysis, then the McGuire TS's and design bases would be revised as needed to ensure that acceptable subcriticality are maintained in the McGuire spent fuel storage pools.



### Significant Change in Spent Fuel Pool Temperature

There is no significant increase in the probability of either the loss of normal cooling to the spent fuel pool water or a decrease in pool water temperature from a large emergency makeup when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the spent fuel pool water. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density that would result in a decrease in reactivity when Boraflex neutron absorber panels are present in the racks. However, since a reduction in the amount of Boraflex present in the racks is considered, and the spent fuel pool water has a high concentration of boron, a density decrease causes a positive reactivity addition. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain  $k_{\text{eff}}$  less than or equal to 0.95 (1470 ppm), will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling event. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a loss of normal cooling to the spent fuel pool will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A decrease in pool water temperature from a large emergency makeup causes an increase in water density that would result in an increase in reactivity when Boraflex neutron absorber panels are present in the racks. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain  $k_{\text{eff}}$  less than or equal to 0.95 (1470 ppm), will compensate for the increased reactivity which could result from a decrease in spent fuel pool water temperature. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a decrease in pool water temperature will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

2. Will the change create the possibility of a new or different kind of accident from any previously evaluated?

No. Criticality accidents in the spent fuel pool are not new or different types of accidents. They have been analyzed in Section 9.1.2.3 of the Updated Final Safety Analysis Report and in Criticality Analysis reports associated with specific licensing amendments for fuel enrichments up to 4.75 weight percent U-235. Specific accidents

considered and evaluated include fuel assembly drop, accidental misloading of spent fuel assemblies into the spent fuel pool racks, and significant changes in spent fuel pool water temperature. The accident analysis in the Updated Final Safety Analysis Report remains bounding.

The possibility for creating a new or different kind of accident is not credible. The amendment proposes to take credit for the soluble boron in the spent fuel pool water for reactivity control in the spent fuel pool while maintaining the necessary margin of safety. Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility, however, a criticality accident resulting from a dilution accident was not considered credible. For the proposed amendment, the spent fuel pool dilution evaluation (Attachment 7) demonstrates that a dilution of the boron concentration in the spent fuel pool water which could increase the rack  $k_{\text{eff}}$  to greater than 0.95 (constituting a reduction of the required margin to criticality) is not a credible event. The requirement to maintain boron concentration in the spent fuel pool water for reactivity control will have no effect on normal pool operations and maintenance. There are no changes in equipment design or in plant configuration. This new requirement will not result in the installation of any new equipment or modification of any existing equipment. Therefore, the proposed amendment will not result in the possibility of a new or different kind of accident.

3. Will the change involve a significant reduction in a margin of safety?

No. The proposed Technical Specification changes and the resulting spent fuel storage operating limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis (Attachment 6) based on the "Westinghouse Spent Fuel Rack Criticality Analysis Methodology" described in Reference 1. The Westinghouse methodology for taking credit for soluble boron in the spent fuel pool has been reviewed and approved by the NRC (Reference 6). This methodology takes partial credit for soluble boron in the spent fuel pool and requires conformance with the following NRC Acceptance criteria for preventing criticality outside the reactor:

(1)  $k_{\text{eff}}$  shall be less than 1.0 if fully flooded with unborated water which includes an allowance for uncertainties at a 95% probability, 95% confidence (95/95) level; and

(2)  $k_{\text{eff}}$  shall be less than or equal to 0.95 if fully flooded with borated water, which includes an allowance for uncertainties at a 95/95 level.

The criticality analysis utilized credit for soluble boron to ensure  $k_{\text{eff}}$  will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95  $k_{\text{eff}}$  calculation to ensure that the spent fuel rack  $k_{\text{eff}}$  will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide safety margin by maintaining  $k_{\text{eff}}$  less than or equal to 0.95

including uncertainties, tolerances and accident conditions in the presence of spent fuel pool soluble boron. The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to exceeding a  $k_{\text{eff}}$  of 0.95 has been evaluated (Attachment 7) and shown to be not credible. Accordingly, the required margin to criticality is not reduced.

The evaluations in Attachment 7, which show that the dilution of the spent fuel pool boron concentration from the conservative assumed initial boron concentration (2475 ppm) to the minimum boron concentration required to maintain  $k_{\text{eff}} \leq 0.95$  (730 ppm) is not credible, combined with the 95/95 calculation which shows that the spent fuel rack  $k_{\text{eff}}$  will remain less than 1.0 when flooded with unborated water, provide a level of safety comparable to the conservative criticality analysis methodology required by References 2, 3 and 4.

Therefore the proposed changes in this license amendment will not result in a significant reduction in the facility's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201-1006.

*NRC Section Chief:* Richard L. Emch, Jr.

*Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* September 26, 2000.

*Description of amendment requests:* The proposed amendments would revise the current licensing basis in the Updated Final Safety Analysis Report by requiring operator action to mitigate the effects of a loss of seal injection (LOSI) cooling to the reactor coolant pumps (RCPs).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change to the licensing basis recognizes that if RCP Number 1 seal leak-off rates are low, continuous RCP operation following a sustained LOSI may no longer be permitted. Tripping the plant, securing the affected RCPs, and maintaining hot standby

conditions following a sustained LOSI will permit adequate RCP seal cooling by readily achievable process controls. These actions ensure that the probability of developing excessive seal leakage equivalent to that of a previously evaluated loss of coolant accident (LOCA), has not been significantly increased. Plant and RCP tripping are anticipated transients that do not involve plant operation outside design limits.

The consequences of large- and small-break (SB) LOCAs have been evaluated and it has been shown that the radiological consequences of these events do not result in unacceptable exposures to members of the public. Therefore, even if stopping of the RCPs following a LOSI and control of process parameters as described above does not preclude RCP seal failures, the consequences of such failure are bounded by the current accident analysis.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The leakage resulting from failed RCP seals may be large enough to be considered a SBLOCA and industry data on SBLOCA initiating frequencies includes the contribution from failed RCP seals. SBLOCAs are a previously evaluated class of accidents. There is no new or different kind of accident created as a result of this change.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The original design objective for the controlled leakage seal assemblies in the RCPs was to permit sufficient controlled leakage following a LOSI, such that cooling of the leakage provided by the thermal barrier heat exchanger would be sufficient to continue RCP operation unabated without challenging seal integrity. This is an implied margin of safety for seal integrity, even if not explicitly defined in the basis for any Technical Specification. It has been postulated that the reduced seal leak-off will no longer permit continuous RCP operation following a LOSI. The proposed change to the licensing basis recognizes this condition and requires pump tripping if seal injection cannot be restored prior to receiving high temperature alarms in the leak-off return lines. Pump tripping reduces the heat generated in the pump and permits readily achievable process controls to maintain adequate seal cooling and an adequate margin to seal failure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.  
*NRC Section Chief:* Claudia M. Craig.

*Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan*

*Date of amendment request:* September 30, 2000.

*Description of amendment request:* The proposed amendment would allow an extension of the steam generator tube inspection surveillance requirements of Technical Specification (T/S) Surveillance Requirement 4.4.5.3. The proposed amendment would prevent a mid-cycle shutdown to meet the required 40-calendar month inspection interval of SR 4.4.5.3 and would allow the steam generator tube inspection to be performed during the refueling outage following the current operating cycle.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The accident considered applicable to the proposed change is a steam generator tube rupture (SGTR). The precursors/initiators of a SGTR (degraded, defective, or leaking tubes) are not known or expected to be present in the CNP [Cook Nuclear Plant] Unit 2 steam generators. These steam generators were newly installed in 1988, and include corrosion prevention design features not included in previous generations of steam generators.

There are no active degradation mechanisms present in the Unit 2 steam generators. Any tube imperfections that may be present or that may be initiated during the current operating cycle are not expected to progress to the point of tube failure before the next refueling outage.

Considering the condition of the steam generators and the operational time between inspections, the proposed change will not significantly increase the probability of occurrence of an accident.

The proposed change will not affect the scope, methodology, acceptance limit, or corrective measures of the existing steam generator examination program.

Unit 2 recently completed an extended shutdown that effectively limited the operational time that is the basis for the surveillance frequency. When the reactor is shut down and the reactor coolant system is at a reduced temperature, the steam generators are not subject to conditions that lead to significant tube degradation. Based on power operation time, the proposed extension will not increase the operating

interval between surveillances beyond that currently allowed by [the] T/S.

The steam generator tube inspection interval is not used in the SGTR accident analysis. The proposed change will, therefore, not affect the accident analysis or methodology.

The severity of an analyzed tube rupture event is not related to the time interval between inspections. The proposed change does not affect allowable leakage rates or source terms, and does not change the duration of an SGTR or the response to the event. Because the severity of an accident is not increased by the proposed change, there is no impact on offsite dose considerations.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will not result in a change in plant configuration or operation. Plant systems and components will not be operated in a different manner because of this change. The proposed change does not affect or create new accident initiators or precursors.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The T/S limit of one gallon per minute total steam generator tube leakage ensures the offsite dose from tube leaks is limited to a small fraction of 10 CFR 100 limits. The T/S leakage limit of 500 gallons per day in one steam generator is based on ensuring tube integrity in the event of a steam line rupture or loss of coolant accident. Because the offsite dose considerations from steam generator tube failures are limited by the primary-to-secondary leak rate program and not the tube inspection program, the proposed change has no impact on offsite dose.

There are no tubes in service in any of the Unit 2 steam generators that were found to be degraded, and no active steam generator tube degradation is known to be occurring. Therefore, the available margin in tube wall thickness is not being significantly reduced. During the last inspection, 50% of the tubes were inspected (more than sixteen times the T/S requirement), and none were found to exceed the plugging limit, providing additional assurance that safety margins are not being reduced. The absence of tube degradation, along with the material and design features and chemistry controls, provide reasonable assurance that tube repair limits will not be approached during the current operating cycle.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the



amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief:* Claudia M. Craig.

*Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of amendment request:* June 30, 2000, as supplemented September 22, 2000.

*Description of amendment request:* The proposed changes would modify Sections 2.4.13.5, "Design Bases for Subsurface Hydrostatic Loading" 2.5.4.6.1, "Design Basis for Groundwater" 3.4.1.2, "Permanent Dewatering System" 3.8.1.6.4, "Waterproofing Membrane" 3.8.1.6.5, "Steel Liner and Penetrations" 9.3.3.1, "Reactor Plant Vent and Drain Systems, Design Bases" 9.3.3.2.4, "Reactor Plant Aerated Drains System" 9.3.3.2.4.1, "Safety-Related Containment Recirculation Cubicle Sump" 9.3.3.3, "Safety Evaluation" 9.3.3.4, "Tests and Inspections" and 12.3.1.3.2, "Post-Accident Access to Vital Areas" Tables 1.8-1, 3.2-1, 8.3-3, 12.3-3, and 12.3-4; and Figures 3.8-67 and 9.3-6 of the Final Safety Analysis Report (FSAR) to reflect the addition of the new subsystem and its impact on other safety-related systems. The new sump pump system creates the possibility of a malfunction of a different type than previously evaluated in the FSAR because of the system's dependence on electrical power; only one non-environmentally qualified, non-safety-related pump is provided; and portions of the Engineered Safety Feature Building structure are now credited with preventing Recirculation Spray System (RSS) cubicle flooding. Additionally, the proposed changes involve deviations from safety classification and "code and standards," Standard Review Plan 3.4.1 and Regulatory Guide (RG) 1.26.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request deals with changes in Millstone Unit No. 3 Final Safety Analysis Report (FSAR) due to the installation of a new sump pump system in the Engineered Safety Features Building (ESFB). The sump pump system which

prevents inleakage through the containment basemat is not connected to and is fully independent of the reactor coolant system. Therefore, the proposed changes to this system will not increase the probability of occurrence of a Loss of Coolant Accident (LOCA). The new system is a support system for the Recirculation Spray System (RSS) and containment protective boundary which are mitigation design features. Therefore, the new system does not increase the probability of occurrence of accidents previously evaluated.

The proposed changes to the groundwater sump system separate the sump from the RSS pump cubicle. As such, the proposed changes would preclude flooding of the RSS cubicles and a potential malfunction of the RSS pumps. The RSS pumps function to provide containment and core cooling, as early as 11 minutes and 30 minutes, respectively, post LOCA. Operability of the RSS pumps is required long term. Since the changes do not affect the operation of the RSS pumps, they will not increase the consequences of a LOCA.

The new collection tank 3SRW-TK1 will be installed in the location of the existing abandoned in place Chemical Addition Tank (CAT) 3QSS\*TK2, by the Refueling Water Storage Tank (RWST). The tank will be seismically supported utilizing similar struts and attachments to the RWST as the removed CAT. A calculation has confirmed that there is no impact on the seismic qualification of the RWST as a result of the new tank. The RWST provides water to the Emergency Core Cooling System (ECCS) and Containment Quench Spray (QSS) which are credited to mitigate the consequences of a LOCA. Therefore, the proposed changes do not increase the consequences of a LOCA.

In the proposed design, the installation of the new safety related collection sump and casing pipe will result in a change in the Supplemental Leak Collection and Release System (SLCRS) boundary within the ESFB. This modification will be performed to meet the SLCRS design requirements. Testing will be performed post modification and routinely to satisfy SLCRS Technical Specification 3/4.6.6 requirements. Per Technical Specification 3/4.6.6 basis, the SLCRS is credited post LOCA to limit the release of fission products from the containment. Since the proposed changes do not affect operability of SLCRS, it does not increase the consequences of a LOCA.

In the proposed changes, sumps 3DAS\*SUMP7A/B inflow pathways will be restored such that it may become potentially contaminated. Emergency operating procedures shall contain operator actions to ensure that power to 3DAS\*SUMP7A/B sump pumps 3DAS-P8A/B is isolated post LOCA. As such, the proposed changes will continue to ensure that potentially contaminated water is not discharged from 3DAS\*SUMP7A/B. Therefore, the changes will not increase the consequences of a LOCA.

The design change, per NUREG-0737 Section II.B.2 requirement, has been evaluated by a calculation to ensure that the required operator actions post LOCA can be performed within a 5 rem whole body dose

requirement, and has been found to be acceptable.

Therefore, these changes will not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This license amendment request is associated with the installation of a new sump pump system in the ESFB. The current and new sump pump systems are not accident initiators since neither system is connected to, and both are fully independent of any system that could cause an accident to occur. The new system, which collects groundwater from beneath the Containment Structure and ESFB, is a support system for the RSS and the containment protective boundary, which are design basis accident mitigation design features. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The Millstone Unit No. 3 FSAR changes reflect the installation of a new sump pump system in the ESFB. The proposed changes do not affect operation of the RWST, ECCS, QSS, RSS, SLCRS, Containment, EDG or any Class 1E component required for safety. The additional load on the Train A EDG and fuel oil consumption are within the calculated allowance. Therefore, these changes do not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

*NRC Section Chief:* James W. Clifford.

*Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* July 28, 2000.

*Description of amendment request:* The proposed amendment would revise the Fort Calhoun Station Unit 1 Technical Specifications to allow installation of tube sleeves as an alternative to plugging to repair defective steam generator tubes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The CE Leak Tight Sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and, therefore, meet the design objectives of the original steam generator tubing. The applicable design criteria for the sleeves conform to the stress limits and margins of safety of Section III of the ASME code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, and faulted conditions provides margin to the acceptance limits.

These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by Regulatory Guide 1.121. Burst testing of sleeved tubes has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

Evaluation of the repaired steam generator tubes indicates no detrimental effects on the sleeve or sleeve-tube assembly from reactor coolant system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Fort Calhoun Station. Corrosion testing of sleeve-tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The installation of the proposed sleeves is controlled via the sleeving vendor's proprietary processes and equipment. The CE process has been in use since 1984 and has been implemented more than 24 times for the installation of over 4,200 sleeves. The FCS steam generator design was reviewed and found to be compatible with the installation processes and equipment.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeved tube is bounded by the current steam generator tube rupture analysis described in Fort Calhoun Station's USAR, Section 14.14. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis, depending on the break location, and therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feed line break will not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the Fort Calhoun Station safety analysis.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the CE Leak Tight Sleeves are designed using the applicable ASME Code as guidance; therefore, they meet the objectives of the original steam generator

tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeves. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. The continued integrity of the installed sleeve is periodically verified by the Technical Specification requirements.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. Therefore, Omaha Public Power District concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The repair of degraded steam generator tubes with CE Leak Tight Sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Code used in the original steam generator design. The portions of the installed sleeve assembly that represents the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation. Use of the previously identified design criteria and design verification testing assures that the margin of safety is not significantly different from the original steam generator tubes. Therefore, OPD concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502.

*NRC Section Chief:* Stephen Dembek.

*PECO Energy Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania*

*Date of amendment request:* July 31, 2000.

*Description of amendment request:* The proposed changes will revise LGS Technical Specifications (TSs) to replace the existing Automatic Depressurization System (ADS) TS Surveillance Requirement (SR) 4.5.1.d.1, a 31-day channel functional test of the accumulator backup compressed gas system low pressure alarm system, with a 31-day verification of the ADS accumulator gas supply header pressure. The existing TS SR 4.5.1.d.1

and SR 4.5.1.d.2.c, a 24-month channel calibration of the accumulator backup compressed gas system low pressure alarm system, will be relocated to the Technical Requirements Manual (TRM).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes have no physical impact on plant equipment or the normal operation of plant systems. The ADS and the ADS accumulator backup compressed gas system affected by the proposed testing changes are normally in a standby mode and there are no existing credible system failures that are accident initiators. The ability of the ADS to depressurize the vessel following a small break Loss of Coolant Accident (LOCA) so that flow from low pressure Emergency Core Cooling Systems (ECCS) can enter the core in time to limit fuel cladding temperatures is maintained by the operability of the ADS accumulators and their inlet check valves. The ADS accumulator backup compressed gas low pressure alarm system has no impact on the ability of the ADS accumulators and associated check valves to maintain an adequate gas supply required to mitigate an accident. Therefore, the removal of the alarm system testing from the TS has no impact on the ability of the ADS to cope with the small break LOCA as previously evaluated. The replacement of the monthly alarm channel functional test with the monthly verification of the ADS accumulator gas supply header pressure will assure that the ADS accumulators are pressurized as required to support ADS operability and the ability of ADS to mitigate the accident as previously analyzed is maintained. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no physical impact on plant equipment or the normal operation of plant systems. The changes are limited to changes in administrative testing requirements for the existing ADS and ADS accumulator backup compressed gas low pressure alarm systems, and the long term gas supply to the ADS valves. The changes do not impact the methods of operation or manipulation of these systems or components. The impact of these changes has been evaluated to assure that the changes are in conformance with the required design and licensing basis, and that system performance is not degraded. The changes do not affect the operation of the ADS or the ADS accumulator backup gas system and do not create any new system failure modes or

accident initiators not previously considered. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes maintain the safety design basis of the ADS and the ADS accumulator backup gas systems. The ADS accumulator backup compressed gas low pressure alarm system does not support the operability of the ADS accumulators which are required to maintain an adequate gas supply for ADS vessel depressurization. Therefore, the Channel Functional Test and Channel Calibration of backup gas system alarms can be removed from the TS and have no impact on the ability of the ADS to depressurize the reactor and maintain current safety margins defined in the design basis for this TS. The availability of the ADS accumulator backup gas system to perform its long term cooling function after an accident or other event is not addressed in any TS or Bases. The proposed changes in testing also do not impact any of the Inservice Inspections or Tests currently performed on the ADS or ADS accumulator backup gas system components. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

*NRC Section Chief:* James W. Clifford.

*PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* February 29, 2000.

*Description of amendment request:* The amendment would incorporate Supplement 3 to PL-NF-90-001, "Application of Reactor Analysis Methods for BWR Design and Analysis: Application Enhancements," into Technical Specification Section 5.6.5, Core Operating Limits Report. The supplement describes alternative methods for the analysis of the rotated bundle event, the control rod withdrawal error event, and the recirculation flow controller event.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[The] proposed alternative analysis methods do not involve an increase in the probability or consequences of an accident previously evaluated. The alternative analysis methods affect the analysis methods used to perform the Rotated Bundle Analysis, the Rod Withdrawal Error Analysis, and the Recirculation Flow Controller Failure Analysis. These events are analyzed on a cycle specific basis to ensure that the operating limits contained in the COLR [Core Operating Limits Report] will provide acceptable consequences to the health and safety of the public consistent with NRC guidelines. No physical changes are being made to plant systems, structures or components. The alternative analysis methods ensure that the [offsite] dose consequences of the postulated events remain within the NRC guidelines.

Based on the above, it is concluded that the alternative analysis methods do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The alternative analysis methods do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed alternative analysis methods affect the analysis methods for the Rotated Bundle, Rod Withdrawal Error and Recirculation Flow Controller Failure Events. Since these alternative analysis methods affect analytical methods and do not affect any plant systems, structures, or components, it is concluded that the proposed alternative analysis methods do not create the possibility for any new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The alternative analysis methods do not involve a significant reduction in the margin of safety.

The Rotated Bundle Methodology is currently analyzed as a moderate frequency event. The alternative methods will instead analyze the Rotated Bundle Event as an infrequent event. Analysis of this event as an infrequent event is consistent with NRC guidance (provided in the Standard Review Plan) and the frequency classification of the event as described in the SSES [Susquehanna Steam Electric Station] FSAR [Final Safety Analysis Report]. The proposed analysis methodology limits the analytical [offsite] dose to a small fraction of 10 CFR 100 guidelines consistent with the NRC guidelines. Therefore, the proposed alternative analysis methods do not represent a significant reduction in the margin of safety.

The Rod Withdrawal Error Analysis currently does not credit the Rod Block Monitor System to limit the extent of the inadvertent rod withdrawal. The alternative

proposed methods will allow credit in the analysis for the Rod Block Monitor to limit the extent of the inadvertent control rod withdrawal. Several plant and procedural improvements have been implemented that have improved the reliability of the Rod Block Monitor System. The analytical acceptance criteria for the event is not affected. Therefore, the proposed alternative analysis methods do not affect the margin of safety.

The Recirculation Flow Controller Failure analysis is currently analyzed using the RETRAN code. The proposed alternative analysis methods use [PPL Susquehanna, LLC's] approved steady state nodal simulation methodology instead of the RETRAN code. The [PPL Susquehanna, LLC,] steady state nodal simulation methodology produces final operating limits that are consistent with the RETRAN methodology. The analytical acceptance criteria is not affected by the alternative analysis methodology. Use of [PPL Susquehanna, LLC's] methodology does not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101-1179.

*NRC Section Chief:* Marsha Gamberoni.

*PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* July 31, 2000.

*Description of amendment request:* The amendment would remove the phrase "maximum pathway" from Surveillance Requirement 3.6.1.3.12 in Technical Specification Section 3.6.1.3, "Primary Containment Isolation Valves."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to eliminate the words "maximum pathway" does not affect any plant system or component. The change does not impact operator performance or procedures. The leak rate testing of the MSIVs [main steam isolation valves] will continue to be performed in accordance with

10 CFR 50 Appendix J. The change does not impact the design basis accident analyses presented in the FSAR [Final Safety Analysis Report]. The change only affects how the as-found leakage is used to evaluate operability and reportability. This change is consistent with the guidance on leak rate testing presented in NEI 94-01 [Nuclear Energy Institute Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J] and the Standard Technical Specifications. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed change to the Technical Specifications does not affect any plant system or component and does not affect plant operation. The consequences of accidents will remain within the accident analysis described in the FSAR. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not affect any plant system or component, and does not have any impact on plant operation. The proposed change does not involve a significant reduction in the margin of safety as currently defined in the bases of the applicable Technical Specification section. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101-1179.

*NRC Section Chief:* Marsha Gamberoni.

*Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of amendment requests:* September 6, 2000 (PCN-274, Supplement 1). This application supersedes the licensee's application of November 24, 1999.

*Description of amendment requests:* The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern California Edison Company to withdraw its November 24, 1999, application for

proposed amendments. The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on December 29, 1999 (64 FR 73098). However, by letter dated September 6, 2000, the licensee withdrew the proposed change. TAC Nos. MA7289 and MA7290 used for the review of the November 24, 1999, application have been closed.

As submitted by the licensee on September 6, 2000, the proposed amendments would modify the Technical Specifications (TSs) for the San Onofre Nuclear Generating Station, Units 2 and 3, to revise TS 3.3.11, "Post Accident Monitoring Instrumentation (PAMI)." Specifically, the proposed change would extend the PAMI channel calibration surveillance frequency from 18 months to 24 months to accommodate a 24-month fuel cycle for all PAMI instruments with the exception of the reactor coolant system (RCS) temperature instrumentation. Surveillance Requirement (SR) 3.3.11.4 relating to RCS temperature instrumentation channel calibration every 18 months will remain in place.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Do the proposed amendments:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed license amendment to extend the calibration surveillance frequency of Post Accident Monitoring Instrumentation (PAMI) (excluding RCS temperature instrumentation) is being made to support plant operation with a 24-month fuel cycle. Increasing the calibration intervals for PAMI instrumentation to 30 months [24 months plus the 25 percent surveillance interval extension allowed by SR 3.0.2] (excluding RCS temperature instrumentation) does not affect the initiation or probability of any previously analyzed accident. Increasing the calibration interval will not affect the integrity of any of the principal barriers against radiation release (fuel cladding, reactor vessel, and containment building). The ability of the plant to mitigate the consequences of any previously analyzed accidents is not adversely affected.

PAMI instrumentation provides to the operators both qualitative and quantitative information used in accident mitigation and for the safe shutdown of the plant. Instrumentation which provides qualitative information is unaffected by a change in instrument accuracy induced by drift due to the increased surveillance interval because no explicit value is required by the Emergency Operating Instructions (EOIs).

Instrumentation that provides quantitative information (i.e., decision points) in the EOIs have been evaluated. This evaluation resulted in no changes to any operating instructions. This evaluation of the proposed change to the surveillance interval demonstrates that licensing basis safety analyses acceptance criteria and San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 EOI criteria will continue to be met.

The proposed new surveillance frequency for these instrument channels was evaluated using the guidance of Generic Letter 91-04 ["Changes in Technical Specification Surveillance Intervals To Accommodate a 24-Month Fuel Cycle"]. The basis for the change includes a quantitative evaluation of instrument drift for PAMI instrumentation (excluding RCS temperature instrumentation) providing quantitative information to the EOIs. Also, loop accuracy/setpoint calculations for these instruments were updated to accommodate the extended surveillance period. Analyses and evaluations completed to assess the proposed increase in the surveillance interval demonstrate that the effectiveness of these instruments in fulfilling their respective functions is maintained. Technical Specifications Channel Checks and Channel Functional Checks for the subject channels, will continue to be performed to provide assurance of instrument channel OPERABILITY.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The increased calibration surveillance interval for PAMI instrumentation (excluding RCS temperature instrumentation) is justified based on evaluation of past equipment performance and does not require any plant hardware changes or changes in normal system operation. Changing the calibration interval for this instrumentation has no means of creating the possibility of a new or different kind of accident. There are no new decision points or operator responses required to support existing accident mitigation strategies.

Therefore, there are no new failure modes introduced as a result of extending these surveillance intervals, and the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No

The proposed change to the calibration surveillance interval (excluding RCS temperature instrumentation) was evaluated using the criteria of 95% probability/95% confidence level for process sensor drift.

PAMI instrumentation are used to provide indication following certain hypothetical accident conditions and are used in EOIs for trending and to initiate operator action at certain decision points. Instrument uncertainty calculations have been updated for PAMI instrumentation used for EOI

decision points as appropriate. Updated calculations show that the total loop uncertainty for PAMI evaluated either decreased or remained the same. These updated calculations demonstrate that applicable accuracy requirements for SONGS 2 and 3 are satisfied with the proposed new surveillance intervals.

Changing the calibration interval for these channels does not affect the margin of safety for previously analyzed accidents. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

*NRC Section Chief:* Stephen Dembek.

*Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* August 31, 2000 (TS 99-17).

*Brief description of amendments:* The proposed amendment would revise the Sequoyah Nuclear Plant (SQN) Technical Specifications (TSs). The revision would revise TS Section 5.6, "Fuel Storage," to allow credit for soluble boron in the fuel storage pools.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The presence of soluble boron in the spent fuel pool (SFP) water for criticality control does not increase the probability of a fuel assembly misplacement accident in the SFP. The handling of the fuel assemblies in the SFP has always been performed in borated water. The proposed change does allow greater flexibility for fuel storage configurations in the SFP. The increased flexibility does not introduce any greater complexity than the 3-zone configuration now in use. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the TS limitations. There is no increase in the probability of a fuel placement accident.

The criticality analysis shows the consequences of the most serious fuel assembly misplacement accident in the SFP

are not affected when considering the presence of soluble boron. Under normal conditions, the rack  $k_{eff}$  [k effective] remains subcritical as required by 10 CFR 50.68 [Section 50.68 of Title 10 of the Code of Federal Regulations], and is less than 0.95 with only 300 ppm [parts per million] soluble boron concentration. In the event of a postulated fuel assembly misplacement, the presence of sufficient soluble boron in the SFP precludes criticality as a result of the misplacement. The criticality analysis demonstrates that the pool  $k_{eff}$  will remain less than 0.95 following an accidental misplacement due to 2000 parts per million (ppm) boron concentration of the pool. In fact, concentration of only 700 ppm soluble boron is sufficient to maintain  $k_{eff}$  less than 0.95 with 95% probability at 95% confidence level for the most serious fuel assembly misplacement. The proposed TS will ensure that an adequate SFP boron concentration is maintained. There is no significant increase in the consequences of the accidental misplacement of spent fuel assemblies in the SFP.

There is no increase in the probability of the loss of normal cooling to the SFP water when considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the SFP water.

Reactivity changes due to SFP temperature changes have been evaluated. The base case criticality analysis used a SFP temperature of 20°C. The SFP reactivity uncertainty due to temperature changes was considered for SFP temperatures ranging from 4°C to 120°C. The reactivity increment between 4°C and 20°C is taken into account as additional uncertainty in the analysis. In all spent fuel temperature cases, the temperature (and void) coefficients of reactivity are negative. Therefore there is no requirement for additional soluble boron above the base case level. Because the coefficients of reactivity are negative, the consequences of the loss of normal cooling to the SFP will not be increased.

Therefore, based on the conclusions of the above analysis, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Spent fuel handling accidents are not new or different types of accidents and have been evaluated in the criticality analysis, Reference 1.

The boron concentration in the SFP water is maintained at a minimum of 2000 ppm. The proposed changes to the TS do not change boron concentration requirements for the SFP water. A dilution of the SFP soluble boron has always been a possibility; however, it was shown in the SFP dilution evaluation (Reference 2) that there are no credible dilution events for which the SFP  $k_{eff}$  could reach criticality. Therefore, the implementation of proposed changes to the TS will not result in the of a new kind of accident.

The proposed changes for re-rack storage management continue to specify

requirements for the spent fuel rack configurations. Since the proposed SFP storage configuration limitations are comparable to those used in the past, the new limitations will not have any significant effect on normal SFP operations and maintenance and will not create any possibility of a new or different kind of accident. Verifications will continue to be performed to ensure that the SFP loading configuration meets specified requirements.

The misplacement of a fuel assembly in the revised storage configurations has been evaluated. In all cases, the rack  $k_{eff}$  remains subcritical and less than 0.95 with 700 ppm boron in the water.

As discussed above, the proposed changes will not create the possibility of a new or different kind of accident. There is no significant change in plant configuration, equipment design, or equipment.

Under the proposed amendment, no changes are being made to the racks themselves, any other systems, or to the physical fuel handling structures in the Auxiliary Building itself. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed change does not involve a significant reduction in a margin of safety.

The TS changes proposed by this License Amendment Request and the resulting spent fuel storage configuration limitations will provide adequate safety margin to ensure that the storage fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis (Reference 1) performed in accordance with accepted spent fuel rack criticality analysis methodology.

While the criticality analysis utilized partial credit for soluble boron, storage configurations have been defined to ensure that the spent fuel rack  $k_{eff}$  will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide subcritical margin such that the SFP  $k_{eff}$  is maintained less than 0.95 under all credible conditions.

The loss of substantial amounts of soluble boron from the SFP, which could lead to  $k_{eff}$  exceeding 0.95, has been evaluated (Reference 2) and shown to be not credible. This evaluation also shows that dilution of the SFP boron concentration from 2000 ppm to 800 ppm is not credible. Also, the spent fuel storage pool  $k_{eff}$  remains less than 1.0 at a 95/95 probability/confidence level with the pool filled with unborated water. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above evaluation, TVA concludes that the proposed changes to the TSs does [sic] not result in a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 10H,  
Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P.  
Correia.

*Vermont Yankee Nuclear Power  
Corporation, Docket No. 50-271,  
Vermont Yankee Nuclear Power Station,  
Vernon, Vermont*

*Date of amendment request:*

September 14, 2000, as supplemented  
on September 22, 2000.

*Description of amendment request:*

This proposed change revises the  
Technical Specification to clarify the  
valve isolation signal information in  
Table 4.7.2 and makes an administrative  
change to the table main steam isolation  
valves component identification to  
include all the valves.

*Basis for proposed no significant  
hazards consideration determination:*  
As required by 10 CFR 50.91(a), the  
licensee has provided its analysis of the  
issue of no significant hazards  
consideration which is presented below:

1. The operation of the Vermont Yankee  
Nuclear Power Station in accordance with  
the proposed amendment will not involve a  
significant increase in the probability or  
consequences of an accident previously  
evaluated.

No changes are being made to plant design,  
method of operation or method of testing.  
This change will not alter the basic operation  
of process variables, systems, or components  
as described in the safety analysis. No new  
equipment is introduced.

The proposed change does not affect the  
ability of the primary containment isolation  
system or ECCS [emergency core cooling  
system] systems to perform their required  
safety functions. The essential safety  
functions of providing primary containment  
integrity and providing water to cool the core  
in the event of an accident are maintained.  
There is no physical or operational change  
being made which would alter the sequence  
of events, plant response, or conclusions of  
existing safety analyses. This proposed  
change results in no impact on analyzed  
accident event precursors or effects.

Therefore, the proposed change does not  
involve a significant increase in the  
probability or consequences of an accident  
previously evaluated.

2. The operation of Vermont Yankee  
Nuclear Power Station in accordance with  
the proposed amendment will not create the  
possibility of a new or different kind of  
accident from any accident previously  
evaluated.

The proposed change does not involve any  
physical alteration of plant equipment and  
does not change the method by which any  
safety-related system performs its function.  
As such, no new or different types of  
equipment will be installed, and the basic  
operation of installed equipment is  
unchanged. There is no change in plant  
operation that involves failure modes other  
than those previously evaluated. The  
methods governing plant operation and

testing remain consistent with current safety  
analysis assumptions.

Therefore, the proposed change will not  
create the possibility of a new or different  
kind of accident from any accident  
previously evaluated.

3. The operation of Vermont Yankee  
Nuclear Power Station in accordance with  
the proposed amendment will not involve a  
significant reduction in a margin of safety.

No changes are being made to plant design,  
method of operation or method of testing.  
This change will not alter the basic operation  
of process variables, systems, or components  
as described in the safety analysis. No new  
equipment is introduced.

The proposed change does not affect the  
ability of the primary containment isolation  
system or ECCS systems to perform their  
required safety functions. The essential safety  
functions of providing primary containment  
integrity and providing water to cool the core  
in the event of an accident are maintained.  
There is no physical or operational change  
being made which would alter the sequence  
of events, plant response, or conclusions of  
existing safety analyses. This proposed  
change results in no impact on analyzed  
accident event precursors or effects.

This proposed change does not alter the  
physical design of the plant, methods or  
modes of operation, testing or analyses,  
thereby resulting in no impact on safety  
functions. Since the proposed change does  
not alter the means by which primary  
containment isolation is maintained and  
containment cooling valves are isolated in  
support of RHR [residual heat removal] LPCI  
[low pressure coolant injection] actuation,  
there is no significant reduction in the  
margin of safety.

The NRC staff has reviewed the  
licensee's analysis and, based on this  
review, it appears that the three  
standards of 10 CFR 50.92(c) are  
satisfied. Therefore, the NRC staff  
proposes to determine that the  
amendment request involves no  
significant hazards consideration.

*Attorney for licensee:* Mr. David R.  
Lewis, Shaw, Pittman, Potts and  
Trowbridge, 2300 N Street, NW.,  
Washington, DC 20037-1128.

*NRC Section Chief:* James W. Clifford.

*Vermont Yankee Nuclear Power  
Corporation, Docket No. 50-271,  
Vermont Yankee Nuclear Power Station,  
Vernon, Vermont*

*Date of amendment request:*

September 19, 2000.

*Description of amendment request:*

This proposed change revises Technical  
Specification (TSs) 3.5.H.3 and 3.5.H.4  
related to low pressure Emergency Core  
Cooling System (ECCS) injection/spray  
subsystem operability during cold  
shutdown and refueling conditions.

Two circumstances are considered: (1)  
when no operations with the potential  
for draining the reactor vessel (OPDRV)  
are in progress (addressed in TS

3.5.H.3), and (2) when OPDRVs are in  
progress (addressed in TS 3.5.H.4). The  
proposed change provides completeness  
in the TS for the defined conditions and  
also provides for the operation of an  
alternative combination of low pressure  
ECCS injection/spray subsystems to  
ensure adequate coolant inventory and  
sufficient heat removal capability for the  
irradiated fuel during cold shutdown  
and refueling conditions when OPDRVs  
are in progress.

*Basis for proposed no significant  
hazards consideration determination:*  
As required by 10 CFR 50.91(a), the  
licensee has provided its analysis of the  
issue of no significant hazards  
consideration which is presented below:

1. The operation of Vermont Yankee  
Nuclear Power Station in accordance with  
the proposed amendment will not involve a  
significant increase in the probability or  
consequences of an accident previously  
evaluated.

No changes are being made to plant design  
or method of operation. This change only  
affects the plant in a cold shutdown or  
refueling condition and will not alter the  
basic operation of process variables,  
structures, systems, or components as  
described in the safety analyses. No new  
equipment is introduced.

The proposed change does not affect the  
ability of low pressure ECCS injection/spray  
systems to perform their required safety  
functions. The essential safety function of  
providing water to reflood the reactor vessel  
following an inadvertent vessel draindown is  
maintained. There is no physical or  
operational change being made which would  
alter the sequence of events, plant response,  
or conclusions of existing safety analyses.

Therefore, the proposed change does not  
involve a significant increase in the  
probability or consequences of an accident  
previously evaluated.

2. The operation of Vermont Yankee  
Nuclear Power Station in accordance with  
the proposed amendment will not create the  
possibility of a new or different kind of  
accident from any accident previously  
evaluated.

The proposed change does not involve any  
physical alteration of plant equipment and  
does not change the method by which any  
safety-related system performs its intended  
safety function. As such, no new or different  
types of equipment will be installed, and the  
basic operation of installed equipment is  
unchanged. There is no change in plant  
operation that involves failure modes other  
than those previously evaluated. The  
methods governing plant operation and  
testing remain consistent with current safety  
analysis assumptions. Therefore, the  
proposed change will not create the  
possibility of a new or different kind of  
accident from any accident previously  
evaluated.

3. The operation of Vermont Yankee  
Nuclear Power Station in accordance with  
the proposed amendment will not involve a  
significant reduction in a margin of safety.



During refueling and cold shutdown conditions with operations having the potential for draining the reactor vessel (OPDRV) in progress, any one ECCS injection/spray subsystem is adequate to reflood the reactor vessel in the event of an inadvertent draindown. Since the proposed change provides an equivalent means for achieving this safety function, there is no reduction in reflood capability. The additional flexibility, to maintain a combination of one core spray subsystem and one LPCI [low pressure coolant injection] subsystem (provided by this change), is equivalent to the safety margin provided by the existing TS since a single active failure affecting one subsystem results in the same remaining capability of one ECCS subsystem.

Since the changed TS provides equivalent low pressure ECCS injection/spray capability and protection from loss of coolant inventory, the risk of an inadvertent draindown event is unchanged, thus preserving previously existing margins of safety.

For circumstances involving no OPDRVs during refueling and cold shutdown conditions, no ECCS or containment cooling equipment is required to meet safety objectives. Thus, the margins of safety for such situations are maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128.

*NRC Section Chief:* James W. Clifford.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* September 26, 2000.

*Description of amendment request:* This proposed change revises Technical Specification (TS) requirements regarding secondary containment systems, including the Standby Gas Treatment System (SBGTS). The affected TS sections are 1.0, Definitions; 3/4.7.B, Standby Gas Treatment System; and 3/4.7.C, Secondary Containment System. In addition, a new TS section, 3/4.7.E, Reactor Building Automatic Ventilation System Isolation Valves (RBAVSIVs), is proposed. Some of the proposed changes are administrative in nature and do not affect the technical aspects of the requirements. Associated changes to the TS Bases are also being made to conform to the changed TS. The

proposed changes provide certain additional flexibility in operations when equipment is made or found to be inoperable, while also ensuring appropriate actions are taken to place the plant in a safe condition under such conditions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes are being made to the plant design, physical system configuration, or basic method of operation as a result of the proposed amendment. The Standby Gas Treatment System (SBGTS) and secondary containment are not assumed to be initiators of any analyzed event. The circumstances for which operability of SBGTS and secondary containment are required are unchanged, and would not occur at any greater frequency as a result of this change. Therefore, the probability of a design basis loss-of-coolant accident or fuel handling accident (the applicable accidents) previously evaluated is not increased.

The proposed change does not increase the consequences of an accident because system operability requirements are being maintained. In lieu of suspending refueling activities when one train of SBGTS is inoperable beyond seven days, placing the operable train of SBGTS in operation ensures that no failures that could prevent automatic actuation have occurred and that any other failure would be readily detected. Operation of one train of the SBGTS is sufficient to mitigate the consequences of any analyzed event. The secondary containment systems assumed to operate following a design basis accident continue to function as assumed in accident analyses to mitigate the consequences of postulated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration to the plant structures, systems, or components (SSCs), or the basic manner in which these SSCs are operated or maintained. The methods by which these systems perform their safety function are unchanged and remain consistent with current safety analysis assumptions. There is no change in plant operation that involves failure modes other than those previously evaluated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change does not result in a significant reduction in a margin of safety because restrictions placed on operations which have the potential for releasing radioactive material to the secondary containment continue to be in accordance with the assumptions and conditions of existing safety analyses. Operations with inoperable equipment have the proper restrictions to maintain existing margins or to place the plant in a safe condition such that inoperable equipment is not required to meet safety analysis assumptions. Ensuring operability of one train of SBGTS together with required secondary containment integrity is sufficient to mitigate the consequences of any analyzed event. Since current analyses are unaffected in this regard, margins of safety are maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128.

*NRC Section Chief:* James W. Clifford.

#### **Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania*

*Date of amendment request:* September 1, 2000.

*Description of amendment request:* The proposed amendment would revise certain 18-month surveillance requirements in the technical specifications by eliminating the condition that testing be conducted during shutdown, or during cold shutdown or refueling mode. The systems that would be affected are the emergency core cooling system, containment depressurization and cooling system, chemical addition system, and containment isolation valve system.

*Date of publication of individual notice in Federal Register:* September 12, 2000 (65 FR 55056).

*Expiration date of individual notice:* October 12, 2000.

*Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of application for amendment:* April 27, 2000.

*Brief description of amendment request:* The amendment seeks to extend the applicability of the current pressure-temperature and overpressure protection system limit curves from 13.3 effective full-power years (EFPY) to 16.2 EFPYS.

*Date of publication of individual notice in Federal Register:* August 29, 2000 (65 FR 52451).

*Expiration date of individual notice:* September 28, 2000.

*Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of amendment request:* August 29, 2000, as supplemented by letter dated September 8, 2000.

*Description of amendment request:* The amendment proposes to change Technical Specifications 3.0.D and 4.0.D to be equivalent to the Boiling-Water Reactor NUREG-1433 guidance for the Improved Technical Specifications limiting condition for operation 3.0.4, which is currently under review.

*Date of publication of individual notice in Federal Register:* September 14, 2000 (65 FR 55650).

*Expiration date of individual notice:* October 16, 2000.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* September 14, 2000.

*Brief description of amendment request:* The amendment would clarify the valve isolation signal information in

the Technical Specification Table 4.7.2 and make an administrative change to the table main steam isolation valves component identification.

*Date of publication of individual notice in Federal Register:* September 27, 2000 (65 FR 68111).

*Expiration date of individual notice:* October 27, 2000.

#### **Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* June 19, 2000, as supplemented August 8, 2000.

*Brief description of amendment:* The amendment allows some emergency diesel generator Technical Specification surveillance requirements to be performed during plant operation instead of during plant shutdown.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 132.

*Facility Operating License No. NPF-62:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 26, 2000 (65 FR 46006). The supplemental information did not change the application or affect the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*AmerGen Energy Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of application for amendment:* April 1, 1999, as supplemented June 14, and July 27, 2000.

*Brief description of amendment:* The amendment revised the TMI-1 Technical Specifications (TSs) 1.4.2, 1.4.3, 1.4.4, 3.3.1.2.b, 3.3.1.3.b, and c, 3.3.2.1, Table 4.1-1 (Items 14, 25, 31, and 32), Table 4.1-3 (Items 4 and 6), Table 4.1-5, and TSs 4.1.5, 4.5.2.1.a and b, 4.5.2.3.a, and 4.5.3.1.b.1 and 2, to: add limiting condition for operation (LCO) action statements and make LCOs and surveillance requirements more consistent with the revised "Standard Technical Specifications for Babcock & Wilcox Plants," (NUREG-1430, Revision 1); correct conflicts or inconsistencies; and revise spent fuel pool sampling frequency from monthly and after adding chemicals, to weekly. TS 3.3.1.2.d is deleted as a result of the LCO additions described above. Also, a Bases statement for surveillance testing was added to Section 4.1 of the TSs and a revised Bases to Section 4.4.4 is included as well.

*Date of issuance:* September 25, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 225.



*Facility Operating License No. DPR-50.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 28, 1999 (64 FR 40906) and August 23, 2000 (65 FR 51349).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2000.

No significant hazards consideration comments received: No.

*Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* December 1, 1999 (102-04378).

*Brief description of amendments:* The amendments to the operating licenses delete or update outdated administrative information and delete license conditions that are no longer applicable or have been completed.

*Date of issuance:* September 29, 2000.

*Effective date:* September 29, 2000, to be implemented within 30 days of the date of issuance.

*Amendment Nos.:* Unit 1-128, Unit 2-128, Unit 3-128.

*Facility Operating License Nos. NPF-41, NPF-51, and NPF-74:* The amendments revised the Operating Licenses.

*Date of initial notice in Federal Register:* March 8, 2000 (65 FR 12288).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2000.

No significant hazards consideration comments received: No.

*Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* June 6, 2000, as supplemented June 29 and July 3, 2000.

*Brief description of amendments:* The amendments restrict the emergency diesel generator (DG) acceptance criteria for steady-state voltage and frequency in several surveillance requirements (SRs) involving DG starts in Technical Specification (TS) 3.8.1, "AC Sources—Operating," of the TSs for the three units. The amendments also add a note to each SR that states "The steady state voltage and frequency limits are analyzed values and have not been adjusted for instrument error." The restricted acceptance criterion is to ensure proper DG operation.

*Date of issuance:* October 4, 2000.

*Effective date:* October 4, 2000, to be implemented within 45 days of the date of issuance. For surveillance requirements associated with the revised steady-state voltage and frequency limits in Technical Specifications 3.8.1 and 3.8.2, the first performance is due at the end of the first surveillance interval that began on the date the surveillance was last performed prior to the date of implementation of the amendments.

*Amendment Nos.:* Unit 1-129, Unit 2-129, Unit 3-129.

*Facility Operating License Nos. NPF-41, NPF-51, and NPF-74:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 12, 2000 (65 FR 43043).

The June 29 and July 3, 2000, supplements provided clarifying information that was within the scope of the application and the **Federal Register** notice, and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of application for amendments:* February 18, 2000.

*Brief description of amendments:* The amendments remove the anticipatory reactor scram signal for turbine electro-hydraulic control (EHC) low oil pressure trip from the reactor protection system (RPS) trip function.

*Date of issuance:* September 27, 2000.

*Effective date:* Immediately, to be implemented within 90 days.

*Amendment Nos.:* 181 and 176.

*Facility Operating License Nos. DPR-19 and DPR-25:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* April 5, 2000 (65 FR 17910).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of application for amendments:* April 25, 2000.

*Brief description of amendments:* The amendments revised Technical

Specification 3/4.9.5, "Communications" to allow the movement of a control rod in a fueled core cell in Operational Condition 5 to be exempt from the requirement that direct communication be maintained between the control room and the refueling platform personnel when the rod is moved with its normal drive system.

*Date of issuance:* October 5, 2000.

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 141 and 127.

*Facility Operating License Nos. NPF-11 and NPF-18:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 14, 2000 (65 FR 37422).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 5, 2000.

No significant hazards consideration comments received: No.

*Consumers Energy Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan*

*Date of application for amendment:* June 27, 2000, as supplemented August 18 and 30, 2000.

*Brief description of amendment:* The amendment changes Improved Technical Specification Sections 3.5.1, "Safety Injection Tanks (SITs)," and 3.5.2, "ECCS [Emergency Core Cooling System]—Operating," regarding completion times for restoring an inoperable SIT and for restoring a low-pressure safety injection train.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented on or before December 31, 2000.

*Amendment No.:* 191.

*Facility Operating License No. DPR-20:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 26, 2000 (65 FR 46007)

(two notices).

The August 18 and 30, 2000, supplemental letters provided clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* June 29, 2000, as supplemented by

letters dated July 27, and August 10, 2000.

**Brief description of amendments:** The amendments revised the Technical Specifications (TS) to reference the Westinghouse Best Estimate Large Break Loss-of-Coolant Accident analysis methodology described in WCAP-12945-P-A, March 1998. These amendments also address corresponding TS Bases changes.

**Date of issuance:** October 2, 2000.

**Effective date:** As of the date of issuance and shall be implemented within 30 days from the date of issuance.

**Amendment Nos.:** 188 and 181.

**Facility Operating License Nos. NPF-35 and NPF-52:** Amendments revised the Technical Specifications.

**Date of initial notice in Federal Register:** August 23, 2000 (65 FR 51350).

The letter dated August 10, 2000, provided additional information that did not change the scope of the application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

**Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

**Date of application for amendments:** May 25, 2000, as supplemented by letters dated July 31, August 8, and August 17, 2000.

**Brief description of amendments:** The amendments temporarily revise TS 3.5.2, "Emergency Core Cooling System;" TS 3.6.6, "Containment Spray System;" TS 3.6.17, "Containment Valve Injection Water System;" TS 3.7.5, "Auxiliary Feedwater System;" TS 3.7.7, "Component Cooling Water System;" TS 3.7.8, "Nuclear Service Water System;" TS 3.7.10, "Control Room Area Ventilation System;" TS 3.7.12, "Auxiliary Building Filtered Ventilation Exhaust System;" and TS 3.8.1, "AC Sources".

**Date of issuance:** October 4, 2000.

**Effective date:** As of the date of issuance and shall be implemented within 30 days from the date of issuance.

**Amendment Nos.:** 189 and 182.

**Facility Operating License Nos. NPF-35 and NPF-52:** Amendments revised the Technical Specifications.

**Date of initial notice in Federal Register:** August 25, 2000 (65 FR 51860).

The supplements dated July 31, August 8, and August 17, 2000,

provided clarifying information that did not change the scope of the May 25, 2000, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

**Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina**

**Date of application for amendments:** September 7, 2000.

**Brief description of amendments:** The amendments revise Surveillance Requirement 3.8.1.9.a by adding a note stating that the upper limits on frequency and voltage are not required to be met for the annual test of the Keowee Hydro Units until the NRC issues an amendment that removes the note in response to an amendment request to be submitted no later than April 5, 2001.

**Date of Issuance:** October 4, 2000.

**Effective date:** As of the date of issuance and shall be implemented within 30 days from the date of issuance.

**Amendment Nos.:** 316, 316, & 316.

**Facility Operating License Nos. DPR-38, DPR-47, and DPR-55:** Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (65 FR 56600 dated September 19, 2000). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 19, 2000, but indicated that if the Commission makes a final no significant hazards consideration.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated October 4, 2000.

**Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana**

**Date of amendment request:** May 8, 2000, as supplemented by letter dated August 30, 2000.

**Brief description of amendment:** The amendment revises Technical Specifications to remove the fuel building (FB) and the FB ventilation

system from the requirements associated with secondary containment during power operation (except during movement of recently irradiated fuel assemblies in the FB).

**Date of issuance:** September 22, 2000.

**Effective date:** As of the date of issuance and shall be implemented 30 days from the date of issuance.

**Amendment No.:** 113.

**Facility Operating License No. NPF-47:** The amendment revised the Technical Specifications.

**Date of initial notice in Federal Register:** June 14, 2000 (65 FR 37424).

The August 30, 2000, supplemental letter provided additional information to support staff review of the original application, and did not affect the initial finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2000.

No significant hazards consideration comments received: No.

**Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1 and ANO-2), Pope County, Arkansas**

**Date of application for amendments:** September 17, 1999, as supplemented by letters dated June 29, August 3, and September 15, 2000.

**Brief description of amendment:** The amendments change heavy load handling requirements and transportation provisions that would permit the movement of the original and replacement steam generators (SGs) through the ANO-2 containment construction opening during the SG replacement outage.

**Date of issuance:** September 25, 2000.

**Effective date:** As of the date of issuance to be implemented within 30 days from the date of issuance.

**Amendment Nos.:** 209 & 221.

**Facility Operating License Nos. DRP-51 and NPF-6:** The amendments revise the licenses.

**Date of initial notice in Federal Register:** February 23, 2000 (65 FR 9004).

The additional information provided in the June 29 and August 3, 2000, supplemental letters was noticed in the **Federal Register** on August 23, 2000 (65 FR 51352). The September 15, 2000, supplement provided clarifying information that was within the scope of the **Federal Register** notice published August 23, 2000, and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 25, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of application for amendment:* November 29, 1999, as supplemented by letters dated January 26, May 17 (2 letters), May 31, and August 4, 2000.

*Brief description of amendment:* The amendment revised the License and Technical Specifications (TSs), and corresponding Bases have been changed to maintain consistency with the transient and accident analyses which evaluated the impact of the replacement steam generators (SGs) that are being used for Cycle 15 operation. The License was revised to incorporate a new methodology employed in calculating radiological doses for some non-loss-of-coolant accident events. TS changes were made to the Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) low pressurizer pressure setpoints, the RPS and ESFAS low SG pressure setpoints, the RPS and ESFAS low SG level setpoints, the reactor coolant flow rate limit, and the high linear power trip setpoints with inoperable main steam safety valves (MSSVs). The amendment also made changes to the TSs and corresponding Bases have been changed that are not directly related to the replacement SGs. These changes revised the allowed outage time of the MSSVs in Modes 1 and 2 to allow up to 12 hours to reduce the high linear power level-high trip setpoint when one or more MSSVs are inoperable, and revised the action statement in Mode 3 to maintain at least two MSSVs operable on each SG.

*Date of issuance:* September 29, 2000.

*Effective date:* As of the date of issuance to be implemented prior to startup from the 2R14 refueling outage.

*Amendment No.:* 222.

*Facility Operating License No. NPF-6:* Amendment revised the License and TSs.

*Date of initial notice in Federal Register:* February 9, 2000 (65 FR 6405).

The January 26, May 17 (2 letters), May 31, and August 4, 2000, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated September 29, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* January 12, 2000, as supplemented by letters dated June 15, 2000, and September 7, 2000.

*Brief description of amendment:* The proposed changes modify Technical Specification (TS) 3.9.4, "Containment Building Penetrations," to allow the containment equipment door, airlocks, and other penetrations to remain open, but capable of being closed, during core alterations or movement of irradiated fuel in containment. Additionally, a note, Bases changes, and Surveillance Requirements changes provide further enhancements to clarify equipment door, airlock, and penetration closure capability.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 169.

*Facility Operating License No. NPF-38:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* February 23, 2000 (65 FR 9008). The June 15, 2000, and September 7, 2000, supplemental letters provided clarifying information that did not expand the scope of the original **Federal Register** notice, or change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania*

*Date of application for amendments:* September 20, 1999, as supplemented May 12, 2000.

*Brief description of amendments:* The amendments revised the standard to which the control room ventilation charcoal and Supplementary Leak Collection and Release System (SLCRS) charcoal must be laboratory tested as specified in: BVPS-1 Technical Specification (TS) 4.7.7.1.1.c.2 for the Control Room Emergency Habitability Systems; BVPS-1 TS 4.7.8.1.b.3 for the SLCRS; BVPS-2 TS 4.7.7.1.d for the

Control Room Emergency Air Cleanup and Pressurization System; and BVPS-2 TS 4.7.8.1.b.3 for the SLCRS. Nuclear Regulatory Commission Generic Letter 99-02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999, requested licensees to revise their TS criteria associated with laboratory testing of ventilation charcoal to a valid test protocol, which included American Society for Testing and Materials (ASTM) D3803-1989. These license amendments revised the charcoal laboratory standard to follow ASTM D3803-1989 for each BVPS Unit. These license amendments also: (1) Revised the minimum amount of output in kilowatts needed for the control room emergency ventilation system heaters at each BVPS unit; (2) revised BVPS-1 SLCRS surveillance testing criteria to be consistent with American Nuclear Standards Institute/American Society of Mechanical Engineers N510-1980, the BVPS-1 control room ventilation testing, and BVPS-2 SLCRS/control room ventilation testing; and (3) made minor typographical corrections.

*Date of issuance:* September 29, 2000.

*Effective date:* As of date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 234 and 117.

*Facility Operating License Nos. DPR-66 and NPF-73:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 29, 2000 (65 FR 52449).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50-412, Beaver Valley Power Station (BVPS-2), Unit 2, Shippingport, Pennsylvania*

*Date of application for amendment:* May 1, 2000, as supplemented July 21, 2000.

*Brief description of amendment:* The amendment: (1) Revised Technical Specification (TS) requirements regarding the minimum number of radiation monitoring instrumentation channels required to be operable during movement of fuel within the containment; (2) revised the Modes in which the surveillance specified by Table 4.3-3, "Radiation Monitoring Instrumentation Surveillance Requirements," Item 2.c.ii is required; (3) revised TS 3.9.4, "Containment Building Penetrations," to allow both personnel air lock (PAL) doors and

other containment penetrations to be open during movement of fuel assemblies within containment, provided certain conditions are met; (4) revised applicability and action statement requirements of TS 3.9.4. to be for only during movement of fuel assemblies within containment; (5) revised periodicity and applicability of Surveillance Requirement (SR) 4.9.4.1; (6) revised SR 4.9.4.2 to verify flow rate of air to the supplemental leak collection and release system (SLCRS) rather than verifying the flow rate through the system; (7) added two new SRs, 4.9.4.3 and 4.9.4.4, for verification and demonstration of SLCRS operability; (8) modified TS 3/4.9.9 for the containment purge exhaust and isolation system to be applicable only during movement of fuel assemblies within containment; (9) revised associated TS Bases and made editorial and format changes; and, (10) revised the BVPS-2 Updated Final Safety Analysis Report (UFSAR) description of a fuel-handling accident (FHA) and its radiological consequences. The changes to the BVPS-2 UFSAR reflect a revised FHA analysis that the licensee performed to evaluate the potential consequences of having containment penetrations and/or the PAL open during movement of fuel assemblies within containment. These UFSAR revisions include potential exclusion area boundary, low population zone, and control room operator doses as a result of an FHA.

*Date of issuance:* September 28, 2000.

*Effective date:* As of date of issuance. Technical Specification changes shall be implemented within 60 days.

*Amendment No.:* 116.

*Facility Operating License No. NPF-73:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 23, 2000 (65 FR 51342).

The July 21, 2000, letter provided clarifying information that did not expand the scope of the amendment and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2000.

No significant hazards consideration comments received: No

*Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida*

*Date of application for amendments:* February 16, 2000.

*Brief description of amendments:* (1) Accident monitoring instrumentation for both St. Lucie Units 1 and 2, (2) motor operated valve thermal overload protection bypass device TS for Unit 2, and (3) an administrative change to the Unit 2 Technical Specification (TS) Index.

*Date of Issuance:* October 4, 2000.

*Effective Date:* October 4, 2000.

*Amendment Nos.:* 165 and 109.

*Facility Operating License Nos. DPR-67 and NPF-16:* Amendments revised the TS.

*Date of initial notice in Federal*

*Register:* April 5, 2000 (65 FR 17916).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa*

*Date of application for amendment:* November 22, 1999, as supplemented August 14, 2000.

*Brief description of amendment:* The amendment would adopt selected NRC approved generic changes to the Improved Technical Specifications (ITS) NUREGs. The 16 changes come from the Technical Specification Task Force (TSTF) process developed by the Industry and the NRC. Three of these changes are Bases-only changes but are included for completeness relative to the TSTF process.

*Date of issuance:* October 3, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 234.

*Facility Operating License No. DPR-49:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 12, 2000 (65 FR 1924).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* November 29, 1999, as supplemented by letter dated May 2, 2000.

*Brief description of amendment:* The amendment changes Technical Specification (TS) 3/4.6.6, "Supplementary Leak Collection and Release System"; TS 3/4.7.7, "Control Room Emergency Ventilation System"; TS 3/4.7.9, "Auxiliary Building Filter System"; and TS 3/4.9.12, "Fuel Building Exhaust System"; in response to Generic Letter 99-02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

*Date of issuance:* October 4, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 184.

*Facility Operating License No. NPF-49:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal*

*Register:* January 26, 2000 (65 FR 4287).

The letter dated May 2, 2000, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the application as published in the **Federal Register**.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*Nuclear Management Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota*

*Date of application for amendment:* July 18, 2000.

*Brief description of amendment:* The amendment changes the Technical Specifications to add operability requirements for the No. 12 residual heat removal service water pump.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment No.:* 113.

*Facility Operating License No. DPR-22:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 23, 2000 (65 FR 51361).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*PECO Energy Company, PSEG Nuclear LLC, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania*

*Date of application for amendment:* June 14, 2000, as supplemented August 9, 2000.

*Brief description of amendment:* This amendment revised the TSs for safety limit Minimum Critical Power Ratio from its current value of 1.10 to 1.09 for two recirculation-loop operation, and from 1.12 to 1.10 for single recirculation-loop operation.

*Date of issuance:* September 22, 2000.

*Effective date:* As of date of issuance, and shall be implemented prior to startup for Cycle 14 operations, scheduled for October 2000.

*Amendment No.:* 236.

*Facility Operating License No. DPR-44:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 26, 2000 (65 FR 46012). The August 9, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2000.

No significant hazards consideration comments received: No.

*Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of application for amendment:* April 27, 2000.

*Brief description of amendment:* The amendment would extend the applicability of the current pressure-temperature limit curves and overpressure protective system setpoints from 13.3 to 16.2 effective full-power years.

*Date of issuance:* October 5, 2000.

*Effective date:* October 5, 2000.

*Amendment No.:* 202.

*Facility Operating License No. DPR-64:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 29, 2000 (65 FR 52431).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2000.

No significant hazards consideration comments received: No.

*Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of application for amendment:* August 29, 2000, as supplemented September 8, 2000.

*Brief description of amendment:* The amendment adapts the provisions of the Boiling Water Reactor Standard Technical Specifications (STS) regarding applicability of Technical Specifications 3.0.D and 4.0.D in the event of plant shutdown.

*Date of issuance:* September 29, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 262.

*Facility Operating License No. DPR-59:* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes September 14, 2000 (65 FR 55650). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 16, 2000, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment finding of exigent circumstances, state consultation, and final determination of no significant hazards consideration determination are considered in a Safety Evaluation dated September 29, 2000.

*Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of application for amendment:* April 27, 2000, as supplemented September 5, 2000.

*Brief description of amendment:* The amendment changes the Trip Level Settings for the Residual Heat Removal and Core Spray Start Timers as well as the Automatic Depressurization System Auto-Blowdown Timer.

*Date of issuance:* October 4, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 263.

*Facility Operating License No. DPR-59:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 14, 2000 (65 FR 37428).

The September 5, 2000, supplement did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* March 2, 2000.

*Brief description of amendments:* The amendments modify the requirements in Technical Specifications Section 3/4.6.3, "Containment Isolation Valves," by changing limiting conditions for operation (LCO) 3.6.3.1 and 3.6.3 for Unit Nos. 1 and 2, respectively. The changes delete the asterisk (\*) modifying the word OPERABLE in LCO 3.6.3.1 (Unit 1) and LCO 3.6.3 (Unit 2), and relocate its associated footnote to the Action portion of the LCO.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 235 and 216.

*Facility Operating License Nos. DPR-70 and DPR-75:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 28, 2000 (65 FR 39959). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* March 13, 2000

*Brief description of amendments:* The amendments revise TS Table 3.3-6, "Radiation Monitoring Instrumentation," by changing the Containment Gaseous Activity Monitor (R12A) alarm and trip setpoint for the containment purge and pressure relief system isolation for Mode 6 (Refueling) operations.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 236 and 217.

*Facility Operating License Nos. DPR-70 and DPR-75:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 26, 2000 (65 FR 46013).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*Southern California Edison Company et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of application for amendments:* May 3, 2000 (PCN-516), as supplemented August 25, 2000.

*Brief description of amendments:* The amendments consist of changes to the Technical Specifications that revise the pressure temperature (P-T) limits for 20 effective full power years and reduce the minimum boltup temperature from 86 °F to 65 °F. The P-T limits calculations are based on the 1989 American Society of Mechanical Engineers Appendix G methodology.

*Date of issuance:* September 28, 2000.

*Effective date:* September 28, 2000, to be implemented within 30 days of issuance.

*Amendment Nos.:* Unit 2—172; Unit 3—163.

*Facility Operating License Nos. NPF-10 and NPF-15:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 31, 2000 (65 FR 34749). The supplemental letter dated August 25, 2000, provided clarifying information that was within the scope of the May 3, 2000, application and the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 28, 2000.

No significant hazards consideration comments received: No.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia*

*Date of application for amendments:* November 17, 1999, as supplemented by letter dated August 21, 2000.

*Brief description of amendments:* The amendments revise TS 5.5.7, "Ventilation Filter Testing Program" to include the requirements for laboratory testing of Engineered Safety Feature Ventilation System charcoal samples in accordance with American Society Testing and Materials D3803-1989 and the application of a safety factor of 2.0

to the charcoal filter efficiency assumed in the plant design-basis dose analyses. In addition, editorial revisions are being made to some portions of TS Section 5.0 to reference the correct sections of Regulatory Guide 1.52.

*Date of issuance:* October 3, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 223 and 164.

*Facility Operating License Nos. DPR-57 and NPF-5:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* December 15, 1999 (64 FR 70091). The supplemental letter dated August 21, 2000, provided clarifying information that did not change the scope of the November 17, 1999, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 3, 2000.

No significant hazards consideration comments received: Yes. One comment was received, and is addressed in the above-referenced Safety Evaluation.

*STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* September 28, 1998, as supplemented on April 22, 1999, April 27, 2000, and August 15, 2000.

*Brief description of amendments:* The amendments revise the technical specifications (TSs) to eliminate the need to enter TS 3.0.3 when multiple trains of either the control room makeup and cleanup filtration system or the fuel handling building exhaust air system are inoperable by providing an allowed outage time of up to 12 hours to restore at least one train to an operable status.

*Date of issuance:* September 26, 2000.

*Effective date:* September 26, 2000, to be implemented within 60 days.

*Amendment Nos.:* Unit 1—125; Unit 2—113.

*Facility Operating License Nos. NPF-76 and NPF-80:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 26, 2000 (65 FR 46016). The August 15, 2000, submittal provided clarifying information that was within the scope of the revised application and **Federal Register** notice and did not change the staff's revised proposed no significant hazards considerations determination issued on July 26, 2000. The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated September 26, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* May 16, 2000.

*Brief description of amendments:* These amendments change the Technical Specifications (TSs) by replacing Surveillance Requirement (SR) 4.8.1.1.2.c, for evaluating fuel oil for the emergency diesel generators, with a Diesel Fuel Oil Program in Section 6. The revision also deletes the portion of the SRs that specifies the use of sodium hypochlorite solution in cleaning of the fuel oil storage tanks, deletes the SR to perform a pressure test on the diesel generator fuel oil system designed to American Society of Mechanical Engineers Section III requirements, and corrects various typographical errors in the TS and Bases. Two Bases pages are also added to each units TS. The applicable TS Bases are also revised.

*Date of issuance:* October 2, 2000.

*Effective date:* October 2, 2000.

*Amendment Nos.:* 261 and 252.

*Facility Operating License Nos. DPR-77 and DPR-79:* Amendments revise the TS.

*Date of initial notice in Federal Register:* August 9, 2000 (65 FR 48758). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* February 4, 2000.

*Brief description of amendments:* These amendments change the Technical Specifications (TS) to revise the cold leg accumulator volume and pressure limits based on instrumentation changes, instrument inaccuracies, and instrumentation tap locations. The applicable TS bases are also revised.

*Date of issuance:* October 6, 2000.

*Effective date:* October 6, 2000.

*Amendment Nos.:* 262 and 253.

*Facility Operating License Nos. DPR-77 and DPR-79:* Amendments revise the TS.

*Date of initial notice in Federal Register:* May 17, 2000 (65 FR 31360). The Commission's related evaluation of



the amendment is contained in a Safety Evaluation dated October 6, 2000.

No significant hazards consideration comments received: No.

*Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* May 25, 2000 (ULNRC-04258).

*Brief description of amendment:* The amendment expands (1) The range of acceptable lift settings for the pressurizer safety valves (PSVs), and (2) the tolerance (from  $\pm 1\%$  to  $\pm 2\%$ ) of the as-found, measured lift settings of tested PSVs, to be operable. Following testing, however, the lift settings of the PSVs would remain not more than the current  $\pm 1\%$ . The amendment revises Technical Specifications (TS) 3.3.2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation," 3.4.10, "Pressurizer Safety Valves," and 3.4.11, "Pressurizer Power Operated Relief Valves (PORVs)," of the Callaway TS. For TS 3.3.2, a new Action H for one or more trains inoperable is added, the note for surveillance requirement (SR) 3.3.2.14 is revised to identify another slave relay that the SR would be applicable to, and the automatic PORV actuation is added to Table 3.3.2-1, "Engineered Safety Features Actuation System Instrumentation." For TS 3.4.10, the range of allowable PSV lift settings in the limiting condition for operation (LCO) is expanded from  $\geq 2460$  and  $\leq 2510$  to  $\geq 2411$  and  $\leq 2509$ , and SR 3.4.10.1 is revised to state that, following testing, the lift settings shall be "within 1% of 2460 psig" instead of simply "within 1%." The nominal PSV lift setting would be changed from 2485 psig to 2460 psig. For TS 3.4.11, Actions A and B is revised to be actions for inoperable PORVs either solely due to excessive PORV seat leakage (Action A) or for reasons other than excessive seat leakage (Action B), and Action E would remain an action for two inoperable PORVs, but would be only for reasons other than excessive seat leakage.

*Date of issuance:* September 25, 2000.

*Effective date:* September 25, 2000, to be implemented (including issuing the revised EOP E-O and training all the control room operator crews on the revised procedure) before the restart from refueling outage 11, the next refueling outage for Callaway Plant, Unit 1, scheduled to begin in Spring 2001.

*Amendment No.:* 137.

*Facility Operating License No. NPF-30:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal*

*Register:* June 28, 2000 (65 FR 29964).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2000.

No significant hazards consideration comments received: No.

*Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* July 21, 2000 (ULNRC-04285), as supplemented August 16, 2000.

*Brief description of amendment:* The amendment revises Limiting Condition for Operation (LCO) 3.9.4, "Containment Penetrations," of the Callaway Technical Specifications (TS) to allow containment penetrations with direct access to the outside atmosphere to be open under administrative controls during refueling operations, by adding a note to the LCO that states "containment penetration flow path(s) providing direct access from the containment atmosphere to the outside atmosphere may be unisolated under administrative controls." In addition, there is a format and editorial correction to TS 3.8.3, "Diesel Fuel Oil, Lube Oil, and Start Air," to correct an error in the conversion to the improved TS issued May 28, 1999, in Amendment No. 133.

*Date of issuance:* September 26, 2000.

*Effective date:* September 26, 2000, to be implemented (including the completion of the administrative procedures that ensure that open containment penetrations, with direct access to the outside atmosphere during refueling operations with core alterations and irradiated fuel movement inside containment, will be promptly closed in the event of a fuel handling accident inside containment) before refueling operations during refueling outage 11.

*Amendment No.:* 138.

*Facility Operating License No. NPF-30:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal*

*Register:* August 23, 2000 (65 FR 51364). The August 16, 2000, supplement provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 2000.

No significant hazards consideration comments received: No.

*Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* September 8, 1999.

*Brief description of amendment:* The amendment authorizes revisions to the descriptions of the steam generator tube rupture and main steam line break accidents in the Callaway Plant, Unit 1 Final Safety Analysis Report (FSAR) to reflect increases in the radiological dose consequences calculated by the licensee for these accidents.

*Date of issuance:* September 27, 2000.

*Effective date:* September 27, 2000, to be implemented in the next periodic update to the FSAR in accordance with 10 CFR 50.71(e). Implementation of the amendment is the incorporation into the FSAR the changes to the description of the facility as described in the licensee's application dated September 8, 1999, and evaluated in the staff's Safety Evaluation attached to the amendment.

*Amendment No.:* 139.

*Facility Operating License No. NPF-30:* The amendment revised the Final Safety Analysis Report.

*Date of initial notice in Federal*

*Register:* October 6, 1999 (64 FR 54383). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of October 2000.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-26645 Filed 10-17-00; 8:45 am]

**BILLING CODE 7590-01-P**

## PRESIDIO TRUST

### **Presidio Theatre (Building 99), The Presidio of San Francisco, California, Notice of Termination of Environmental Impact Statement Process**

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of termination of Environmental Impact Statement (EIS) process for the rehabilitation and expansion of the Presidio Theatre (Building 99) within The Presidio of San Francisco, San Francisco, California (Presidio).

**RATIONALE:** The Presidio Trust (Trust) is terminating the EIS process for the Presidio Theatre in order to complete an update of the 1994 General Management

Plan Amendment (GMPA) for Area B of the Presidio and associated EIS as noticed on June 30, 2000 (65 FR 40707-40708) and amended on October 11, 2000 (65 FR 60477-60478). It is expected that this plan update, known as the Presidio Trust Implementation Plan (PTIP) will provide a comprehensive planning framework within which future projects for the Presidio would proceed. Following the completion and adoption of the PTIP and associated EIS and if appropriate within the adopted comprehensive planning framework, the Trust expects to re-propose and reinstate a project related to the Presidio Theatre, and will inform the public of its intent at that later date. As a result of this notice of termination, the Presidio Theatre project is no longer being treated as an assumption common to all alternatives (i.e., as a "given") in the PTIP NEPA process.

### Background

On April 14, 2000, the Trust announced in the **Federal Register** (65 FR 20218) its intention to prepare an Environmental Assessment (EA) for rehabilitating the existing 15,140-square-foot Presidio Theatre and adding up to 45,000 square feet of new construction for theater uses, a restaurant, retail museum and library store (project). On May 10, 2000, the Trust held a public scoping workshop to solicit public comment regarding the range of alternatives and the specific impacts to be evaluated in the EA. Following the workshop, the Trust determined based upon public comment that an EIS rather than an EA, as previously noticed, would better serve the agency's compliance with the NEPA's requirements. Therefore, on June 9, 2000, pursuant to 40 CFR 1508.22, the Trust published a notice of intent to prepare an EIS (65 FR 36746) and to extend the public scoping period to provide additional time for the public to make views known on the project. In response to public input at the May 10, 2000 scoping workshop, the Trust held a second public scoping workshop on June 19, 2000, at which time the public was able to tour Building 99 and neighboring Building 100 and to comment on revised project alternatives. Shortly after the end of the public comment period on July 24, 2000, the Trust had received 11 comment letters on NEPA issues and concerns regarding the project from seven agencies, two commenting organizations (one organization submitted two letters), and one individual. An additional 15 organizations and individuals also

submitted letters expressing either their support or opposition to the project.

Termination of the Presidio Theatre project EIS at this time is with the mutual agreement of both the Trust and San Francisco Film Centre (project proponent). Independent of the Presidio Theatre EIS process, the Trust initiated the review and update of the GMPA. The PTIP and associated EIS will provide a comprehensive planning framework for Area B of the Presidio. Therefore, the Trust and the Presidio Theatre project proponent have determined to terminate the Presidio Theatre EIS process until completion of the PTIP and PTIP EIS process. A complete administrative record, including all public and agency comments received and all work completed or underway on the Presidio Theatre project, will be maintained by the Trust pending reinstitution, if appropriate, of a Presidio Theatre project following adoption of a governing comprehensive plan for Area B of the Presidio.

**FOR FURTHER INFORMATION CONTACT:** John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052. Telephone: 415-561-5300.

Dated: October 12, 2000.

**Karen A. Cook,**  
General Counsel.

[FR Doc. 00-26706 Filed 10-17-00; 8:45 am]

**BILLING CODE 4310-4R-P**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (DuraSwitch Industries, Inc., Common Stock, \$.001 Par Value) File No. 1-15069

October 12, 2000.

DuraSwitch Industries, Inc., a Nevada corporation ("Comany"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities and Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). Trading in the Security on

the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on October 11, 2000. The Company hopes to realize a broader institutional and retail investor base by transferring trading in its Security to the Nasdaq.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Security and that its application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued designation for quotation on the Nasdaq and registration under Section 12(g) of the Act.<sup>3</sup>

Any interested person may, on or before November 2, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 00-26743 Filed 10-17-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24685; File No. 812-12138]

### The Penn Mutual Life Insurance Company, et al., Notice of Application

October 11, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act") granting exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the recapture of certain credit enhancements (i) made by

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(g).

<sup>4</sup> 17 CFR 200.30-3(a)(1).



The Penn Mutual Life Insurance Company ("Penn Mutual") under certain individual deferred variable annuity contracts ("Contracts") that Penn Mutual will issue and fund through Penn Mutual Variable Annuity Account III ("Variable Account III"); and (ii) made under contracts that are substantially similar in all material respects to the Contracts that Penn Mutual or The Penn Insurance and Annuity Company ("Penn Insurance") may issue and fund in the future ("Future Contracts") through Variable Account III or other current or future separate accounts established by Penn Mutual or Penn Insurance. Applicants also request that the order extend to any other National Association of Securities Dealers, Inc. member broker-dealer controlling, controlled by, or under common control with Penn Mutual that may serve as a principal underwriter of the Contracts or Future Contracts funded through Variable Account III or other separate accounts maintained by Penn Mutual or Penn Insurance.

**APPLICANTS:** The Penn Mutual Life Insurance Company, Penn Mutual Variable Annuity Account III, The Penn Insurance and Annuity Company, and Hornor, Townsend & Kent, Inc. ("HTK") (collectively "Applicants").

**FILING DATE:** The application was filed with the Commission on June 23, 2000, and amended on September 21, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on November 6, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, c/o C. Ronald Rubley, Esq., Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103.

**FOR FURTHER INFORMATION CONTACT:** Paul G. Cellupica, Senior Special Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (tel. (202) 942-8090)).

#### Applicants' Representations

1. Penn Mutual is a mutual life insurance company organized under the laws of the Commonwealth of Pennsylvania in 1847. It provides life insurance, annuity and investment products. The principal offices of Penn Mutual are located at 600 Dresher Road, Horsham, Pennsylvania 19044. Penn Mutual is authorized to conduct life insurance and annuity business in all states of the United States and in the District of Columbia.

2. Variable Account III is a separate account of Penn Mutual, and serves as a funding entity for variable annuity contracts issued by Penn Mutual. Investments held in Variable Account III are segregated from all other assets of Penn Mutual for the purpose of funding variable annuity contracts. Variable Account III was established under the laws of Pennsylvania in 1982 and is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811-03457).

3. Penn Mutual has filed a registration statement on Form N-4 under the 1940 Act and the Securities Act of 1933, as amended, to register interests in Variable Account III created pursuant to the Contracts File No. 333-39804).

4. Penn Insurance is a stock life insurance company organized under the laws of the State of Delaware, and is a wholly-owned subsidiary of Penn Mutual. The principal offices of Penn Insurance are located at 600 Dresher Road, Horsham, Pennsylvania 19044. Penn Insurance is authorized to conduct life insurance and annuity business in most states of the United States and in the District of Columbia.

5. Hornor, Townsend & Kent, Inc. is a wholly-owned subsidiary of Penn Mutual and serves as principal underwriter of the Contracts and other variable annuity contracts issued by Penn Mutual and Penn Insurance. HTK is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

6. The Contracts provide, among other features, for the accumulation of assets and the payment of an annuity over time, on both a variable basis and a fixed basis. The Contracts provide for payment of a death benefit to a beneficiary if the owner of the contract

or the annuitant named in the contract dies during the accumulation phase of the contract. The Contracts are designed to give the owner flexibility in planning for retirement and in meeting other financial goals. Benefits of the Contracts include the manner in which investment earnings are taxed, the availability of multiple investment options, and the provision for annuity and death benefit guarantees. The Contracts provide various annuity benefits and payout options, as well as transfer privileges among investment options.

7. Penn Mutual imposes charges against the value of the Contracts allocated to subaccounts of Variable Account III. For Contracts with a Variable Account Value of \$100,000 or less, an annual administration charge is made that is the lesser of \$40 or 2% of the Variable Account Value. Accumulation units are used to pay this charge. A daily administration charge is made against the net asset value of the subaccounts that will not exceed an effective annual rate of 0.15%. A daily mortality and expense risk charge is made against the net asset value of the subaccounts that will not exceed an effective annual rate of 1.25%. The mortality and expense risk charge compensates Penn Mutual for the mortality-related guarantees it makes under the Contracts (*i.e.*, the death benefit guarantee and the guarantee that the annuity factors will never be decreased if mortality experience is substantially different than that assumed in the Contracts), and for the risk that administration charges will be insufficient to cover administration expenses over the life of the Contracts issued by Penn Mutual. The mortality and expense risk charge is applied during both the accumulation phase and the annuity phase of the Contracts.

8. If a Contract Owner dies during the accumulation phase of the Contract, Penn Mutual will pay the designated beneficiary the value of the Contract. If the annuitant named in the Contract dies during the accumulation phase, Penn Mutual will pay the designated beneficiary the sum of the Contract's variable account death benefit and fixed account death benefit. The variable account death benefit is the greater of: (i) the value of the Contract invested in subaccounts of Variable Account III; or (ii) the amount of purchase payments made by the purchaser which were allocated to subaccounts and the amount of transfers made to subaccounts, less the amount of all withdrawals and transfers from the subaccounts. The Contract Owner may elect to purchase a guaranteed

minimum rising floor death benefit as a rider to the Contract.

9. Full or partial withdrawals may be made at any time during the accumulation phase of the Contract. The amount available for withdrawal is based on the value of the Contract next determined after Penn Mutual receives the request for withdrawal.

10. No sales load is deducted from purchase payments before allocating them to subaccounts of Variable Account III. A sales charge may, however, be deducted from withdrawals under certain circumstances. If the Contract Owner makes a withdrawal and a purchase payment was made in any of the eight contract years prior to the date of the withdrawal, a sales charge may be deducted, subject to certain exceptions noted below. Amounts withdrawn are attributed in sequence to prior purchase payments starting with the first purchase payment. The table below shows the contingent deferred sales charge that may be deducted from withdrawals. The charge is made only against amounts equal to purchase payments made by the Contract Owner and is not made against any gains attributable to such purchase payments or against amounts attributable to any purchase payment credits made to the Contracts by Penn Mutual.

Number of contract years since purchase payments	Contingent deferred sales charge (% of purchase payment)
0-3 .....	8
4 .....	7
5 .....	6
6 .....	5
7 .....	3
8 .....	3
9 and later .....	0

The Contract Owner may make certain withdrawals at any time without any sales charge being imposed. At the end of the first contract year and once in each contract year thereafter, the Contract Owner may withdraw up to 15% of total purchase payments (as of the date of the withdrawal request) without incurring a sales charge. The Contract Owner may elect to receive this free withdrawal in a lump sum or on a systematic basis as provided in the Contracts. Withdrawals of up to \$500,000 may also be made for medical reasons and for disability reasons without incurring a sales charge, as provided in the Contracts and described in the Prospectus. A withdrawal that is not subject to a deferred sales charge is referred to as a "Free Withdrawal."

11. The Contracts contain a "free-look" provision as required under state law. Under the free-look provision, the purchaser may return the Contract within a certain number of days after purchase and receive the value of the Contract on the date it was returned plus any premium taxes deducted from the purchase payment or, in some states, the purchase payment that was made to Penn Mutual. The free-look period generally is ten days, but may be for a longer period under the laws of some states and under different factual circumstances.

12. The Contracts have a credit enhancement feature. Each time a purchaser makes a purchase payment under the Contract, Penn Mutual will credit an additional amount to the Contract from its general account assets ("Purchase Payment Enhancement"). Purchase Payment Enhancements will be allocated to subaccounts of the Variable Account III and to the fixed accounts in the same proportion as purchase payments are allocated under the Contract. Penn Mutual will determine the amount of the Purchase Payment Enhancement by multiplying the purchase payment by the applicable payment percentage set forth in the table below.

Total purchase payments less total withdrawals made under the contract	Purchase payment enhancement percentage
Less than \$100,000 .....	3
\$100,000 to \$500,000 .....	4
\$500,000 to \$2,000,000 .....	5

In addition, if the initial purchase payment made under the Contract is \$2,000,000 or more, Penn Mutual will credit a Purchase Payment Enhancement to the Contract in an amount equal to 6% of the initial purchase payment. If more than one purchase payment is made during the first year of the Contract, the Contract may receive an additional Purchase Payment Enhancement at the time of each additional purchase payment, based upon a Purchase Payment Enhancement percentage rate applicable to all purchase payments made during the year. Such additional Purchase Payment Enhancement will be determined as follows: When an additional purchase payment is made, Penn Mutual will determine the difference between: (i) The sum of all prior purchase payments made during the year times the purchase payment percentage applied to the current purchase payment; and (ii) the total Purchase Payment Enhancement previously credited to the Contract

during the year. The difference, if any, will be credited to the Contract as an additional Purchase Payment Enhancement.

13. The Contract provides that if it is returned to Penn Mutual pursuant to the free-look provision, the Contract Owner will not receive a Purchase Payment Enhancement and will not receive any investment gain or be charged any expense that would have been attributable to such Purchase Payment Enhancement.

14. The Contract also provides that if the Contract Owner makes a withdrawal from the Contract within twelve months of the crediting of a Purchase Payment Enhancement, and if the withdrawal is subject to a deferred sales charge under the terms of the Contract, the Purchase Payment Enhancement will be recaptured by Penn Mutual and will not be paid to the Contract Owner.

15. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent deemed necessary to permit Penn Mutual to issue the Contracts and to permit Penn Mutual and Penn Insurance to issue Future Contracts that provide for the recapture of certain Purchase Payment Enhancements when the Contract Owner makes a withdrawal from the Contract that is subject to a deferred sales charge within one year of the date a purchase payment and the related Purchase Payment Enhancement were credited to the Contract.

#### Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts and any Future Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Subsection (i) of Selection 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company

and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless "such contract is a redeemable security."

4. Section 2(a)(32) of the Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that the recapture by Penn Mutual of a Purchase Payment Enhancement when a withdrawal is made from the Contract within one year of the crediting by Penn Mutual of a Purchase Payment Enhancement would not deprive the owner of his or her proportionate share of the assets of Variable Account III. The Contract Prospectus informs Contract Owners that any Purchase Payment Enhancement credited to the Contract within one year of the date of a full or partial withdrawal from the Contract that is subject to a deferred sales charge will be deducted from the value of the Contract. Applicants state that the Contract and the Prospectus make clear that any Purchase Payment Enhancement credited to the Contract in connection with a purchase payment made by the Contract Owners is conditioned on the purchase payment remaining in the Contract for a period of at least one year (unless the purchase payment may be withdrawn without payment of a deferred sales charge). Applicants assert that the Contract does not provide a vested right to a Purchase Payment Enhancement when the owner makes a withdrawal within one year of the credit unless the withdrawal is a Free Withdrawal. Because the Purchase Payment Enhancement is conditional and not vested, Applicants maintain that the recapture of the Purchase Payment Enhancement is simply the retrieval by Penn Mutual of its own assets.

6. Applicants state that the Contracts provide for the conditional crediting of Purchase Payment Enhancements during a one-year period to provide Penn Mutual with some measure of protection against purchasers making purchase payments with the intent of gaining a Purchase Payment Enhancement and then withdrawing purchase payments within a relatively short period of time. They state that the Contract is designed as a long-term investment vehicle and that it is

intended to provide the owner with the opportunity for long term growth of assets and with income and assets for retirement. Applicants state that the Contracts are also intended to provide Penn Mutual, the issuer, with the opportunity to recover over the long term the cost it incurs in issuing and administering the Contracts. Applicants maintain that the conditional crediting of Purchase Payment Enhancements during a one-year period following a purchase payment is consistent with and a necessary part of the design of the Contracts. Further, the exemptions requested are limited in important respects. Recapture of a Purchase Payment Enhancement will be made only if a withdrawal is made within one year of the crediting of the Purchase Payment Enhancements. In addition, there will be no recapture if the withdrawal is not subject to a deferred sales charge.

7. Applicants submit that under the terms of the Contracts, as described in the Prospectus, the purchaser will receive his or her proportional share of Variable Account III in accordance with the purpose and intent of Sections 27(i)(2)(A) and 2(a)(32) of the Act.

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Applicants submit that the recapture of the Purchase Payment Enhancement is not contrary to Section 22(c) and rule 22c-1.

9. Applicants state that the recapture of the Purchase Payment Enhancement described in the Application does not involve either of the harms that Rule 22c-1 was intended to address, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including

speculative trading practices. They state that these harms were the result of backward pricing, or the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Applicants contend that the proposed recapture of the Purchase Payment Enhancement poses no such threat of dilution. They state that to effect a recapture of a Purchase Payment Enhancement, Penn Mutual will redeem interests in subaccounts of Variable Account III at a price determined on the basis of the current net asset value of Variable Account III. The amount recaptured will equal the amount of the Purchase Payment Enhancement that Penn Mutual paid out of its general account assets. Applicants state that although an owner will be entitled to retain any investment gain resulting from the Purchase Payment Enhancement, the owner will retain the gain based on current net asset value. Applicants submit that no dilution will occur upon the recapture of the Purchase Payment Enhancement.

10. Applicants assert that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Purchase Payment Enhancement. They state that there is no possibility that the recapture of such Purchase Payment Enhancements will lead to speculative trading in interests created under the Contract.

11. Applicants submit that because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Purchase Payment Enhancement, Section 22(c) of the Act and Rule 22c-1 thereunder should not be applied to the recapture of Purchase Payment Enhancements described in the Application.

12. Applicants represent that any Future Contracts will be substantially similar in all material respects to the Contracts. They submit that an order granting exemptive relief to Future Contracts would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources.

## Conclusion

Applicants request an order pursuant to Section 6(c) of the Act for exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent deemed

necessary to permit Penn Mutual to issue the Contracts and to permit Penn Mutual and Penn Insurance to issue Future Contracts which allow them to recapture Purchase Payment Enhancements as described herein. For the reasons stated in this Application, Applicants submit that the requested exemptions meet the standards set out in Section 6(c), namely, that the exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 00-26744 Filed 10-17-00; 8:45 am]

**BILLING CODE 8010-01-M**

## DEPARTMENT OF STATE

[Public Notice No. 3438]

### Advisory Committee on International Economic Policy; Open Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00 a.m. to 1:00 p.m. on Tuesday, October 31, 2000, in Room 1105, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government.

Topics for the October 31 meeting will be:

- Priority Democracies: Colombia and Nigeria
- Resources for Foreign Policy—What Americans Get for Their Tax Dollars
- Foreign Policy Implications of Rising Oil Prices
- Updates on:
  - Biotechnology
  - Global Information Economy
  - Other Current Foreign Policy Issues

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your

name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by fax (202) 647-5936 (Attention: Cecilia Walker) or email: (walkercr@state.gov) by October 27th. On the date of the meeting, persons who have registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

For further information about the meeting, contact Deborah Grout, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 3526, Main State, Washington, DC 20520. Tel: 202-647-2534; or Carol Thompson, Email: thompsonce@state.gov.

Dated: October 12, 2000.

**Carol E. Thompson,**

*Executive Secretary.*

[FR Doc. 00-26776 Filed 10-17-00; 8:45 am]

**BILLING CODE 4710-07-P**

## DEPARTMENT OF STATE

[Public Notice No. 3437]

### Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of a Closed Meeting

The Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on October 29, 2000, at the Imperial Hotel, 1-1-1, Uchisaiwaicho, Chiyoda-ky, Tokyo 100-8558, Japan. This session will involve discussion of the Eighth Annual Meeting of the North Pacific Anadromous Fish Commission, to be held on October 30—November 2, 2000. The discussion will begin at 7:00 p.m. and is closed to the public.

The members of the Advisory Panel will examine various options for the U.S. position at the Eighth Annual Meeting. These considerations must necessarily involve review of sensitive matters, the disclosure of which would frustrate U.S. participation at the Annual Meeting. Accordingly, the determination has been made to close the 7:00 p.m. meeting pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. Section 552b(c)(9).

Requests for further information on the meeting should be directed to Ms. Sally Cochran, International Relations Officer, Office of Marine Conservation (OES/OMC), Room 5806, U.S. Department of State, Washington, D.C.

20520-7818. Ms. Cochran can be reached by telephone on (202) 647-2883 or by FAX (202) 736-7350.

Dated: October 11, 2000.

**Mary Beth West,**

*Deputy Assistant Secretary for Oceans and Fisheries, Department of State.*

[FR Doc. 00-26775 Filed 10-17-00; 8:45 am]

**BILLING CODE 4710-09-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD17-00-015]

### Application for Recertification of Cook Inlet Regional Citizen's Advisory Council

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of Availability; request for comments.

**SUMMARY:** The Coast Guard announces the availability of and seeks comments on the application for recertification submitted by the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) for September 1, 2000 through August 31, 2001. Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizen's Advisory Council for Cook Inlet.

**DATES:** Comments must reach the Seventeenth Coast Guard District on or before November 17, 2000.

**ADDRESSES:** You may mail your comments to the Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK, 99802-5517. You may also deliver them to the Juneau Federal Building, room 753, 709 W 9th St, Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. Comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, room 753, 709 W 9th St.

A copy of the application is also available for inspection at the Cook Inlet Regional Citizen's Advisory Council Offices at 910 Highland Avenue, Kenai, AK 99611-8033 between the hours of 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 283-7222 in Kenai, Alaska.

**FOR FURTHER INFORMATION CONTACT:** For questions on viewing or submitting

material to the docket contact LT Ryan Murphy, Seventeenth Coast Guard District (mor), (907) 463-2817.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of CIRCAC. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD17-00-15) and the specific section of this document to which each comment applies, and give the reason for each comment. Please provide all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (m), Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK, 99802-5517. The request should include reasons why a hearing would be beneficial. If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 626000), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of CIRCAC, the currently certified advisory group for the Cook Inlet region. In accordance with the review and certification process contained in the policy statement, the Coast Guard

announces the availability of that application.

At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify CIRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: October 4, 2000.

T.J. Barrett,

*Rear Admiral, U.S. Coast Guard Commander, Seventeenth Coast Guard District.*

[FR Doc. 00-26774 Filed 10-17-00; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[USCG 2000-8079]

#### Setting the Environmental Agenda of the Coast Guard for Oil Pollution—Prevention, Preparedness, and Response—in the 21st Century

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Coast Guard is holding at least one public meeting to help in setting its environmental agenda for oil pollution—prevention, preparedness, and response—in the 21st Century. A decade after the Oil Pollution Act of 1990, spills of cargo oil from tank vessels and other sources have declined; but spills continue to occur in marine transport and to pose new risks and challenges. The Coast Guard hopes to receive input from all stakeholders to identify likely threats to the environment, and to receive ideas on which it may base its prevention, preparedness, and response programs and needs in the future.

**DATES:** (1) The public meeting will take place on December 12, 2000, from 8:30 a.m. to 4 p.m., but will conclude before

4 p.m. if there are no more comments.

(2) Comments and related material must reach the Docket Management Facility on or before December 30, 2000. (3) If the Coast Guard decides to hold a second public meeting, it will announce that meeting by a later notice in the **Federal Register**.

**ADDRESSES:** The public meeting will take place at Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593-0001, in room 4202. The meeting will also be video broadcast on the internet.

To make sure your comments and related materials enter the docket [USCG 2000-8079] once and only once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access the public docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this public meeting, including those on how to access the meeting on the internet, contact Commander George H. Burns III, Office of Response (G-MOR-1), Coast Guard, telephone 202-267-0421, e-mail [Gburns@comdt.uscg.mil](mailto:Gburns@comdt.uscg.mil). (In particular, we ask that those attending the meeting notify CDR Burns so he can ensure that adequate space is available.) For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202-366-9329.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this meeting by attending it or by submitting comments and related material to the docket. If you do submit comments or related material, please include your name and address, identify this notice [USCG 2000-8079], and the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. The Coast Guard will consider the comments received from this initial meeting, and those submitted to the docket, to evaluate the need for subsequent meetings, which may examine various factors in more detail. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgement of receipt of your comments, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received whether submitted in writing to the docket or presented during the meeting.

### Background and Purpose

Many factors determine the nature of spills into our nation's waterways and coastal areas. One such factor is future growth. Larger ships with greater fuel capacities may use our navigable waters. Increasing demand for petro-chemicals may exert pressures on the transport system. Offshore production of crude oil from remoter areas will grow as the price of oil rises. Transport of oil through aging pipelines near or under our waterways will pose increasing risk of spills into aquatic and marine environments. Further, with the phasing-in of double-hull requirements for tankships and tank barges over the next several years, the Coast Guard suspects that both the methods of waterborne transport of oil and the risks associated with these methods will change. All of this will affect the environmental services and leadership that the Coast Guard provides.

The Coast Guard, the public, and industry have engaged in numerous partnerships, and conducted many studies, over the past ten years; these certainly point the way toward a reasonable and coherent environmental agenda to fit the future. This meeting will examine ideas generated by these efforts, as well as explore emerging

trends. It will be the first step in reconciling the expectations of both the public and industries engaged in marine transport. An agenda will be provided at the meeting based on the following questions.

**Questions:** Your responses to the following questions are solicited. Please submit your responses as noted above under **ADDRESSES**.

1. What source do you see as presenting the biggest risk of oil pollution?
2. How do you see that risk changing over the next ten years?
3. How do you see the waterborne transport of oil changing over the next ten or twenty years?
4. What best practices for prevention, if any, from what industry or company, should we urge for uniform application throughout the waterborne transport of oil?
5. Should the Coast Guard concentrate its efforts toward preventing oil pollution on vessels and management, or on measures external to the vessel, such as Vessel Traffic Services, port risk assessments, and the like?
6. Do you perceive the public as becoming less tolerant of the risks of oil pollution? If yes, how is that affecting shipping, mariners' practice, and efforts toward prevention?
7. How will mariners' roles change with respect to preventing oil pollution in the future?
8. Should the Coast Guard be equally prepared for spills from foreign sources and for those from domestic ones? If so, how should we advance preparedness for spills from foreign sources (perhaps through the International Maritime Organization or classification societies)?
9. Should response plans for other sources of spills mirror the response plans for vessels envisioned by OPA 90?
10. Should non-tank vessels have to contract resources for worst cases, as tank vessels must under OPA 90?
11. Should the scope of, frequency of, and criteria for spill response exercises align with those in the Preparedness for Exercise Program (PREP)?
12. Should Qualified Individuals for non-tank vessels meet the same standards as those required for tank vessels?
13. Should strategies for response to and mitigation of other sources of spills differ from those used for sources of spills identified under OPA 90? How?
14. What needs improvement in control of and assessment for response to spills? (These comprise modeling, remote sensing, direct-reading instruments, and field technologies.) How?
15. What needs improvement in cleanup methods and technologies?

(These comprise in-situ burning, dispersants, mechanical recovery, shoreline cleanup, bioremediation, and other innovations.) How?

16. How does risk of oil pollution compare with risks from other forms of pollution in terms of effect on the environment? (These may comprise hazardous materials, airborne materials, aquatic nuisance species, or others.)

17. Should we consider specific sources of funding for further improvements? (These may comprise per-barrel taxes, port tariffs, users' fees, or others.) Should the Oil Spill Liability Trust Fund or a similar source be available for preventive measures?

18. What improvements would you make to the U.S. Marine Transportation System to minimize the risk of pollution?

19. Given that the costs of improving the infrastructure of the Marine Transportation System could be significant, what portion of these costs of improvement to reduce the risk of pollution should the public bear?

### Information on Services for People with Disabilities

For information on facilities or services for people with disabilities, or to request special assistance at the meeting, please contact Commander George H. Burns III, Office of Response (G-MOR-1), Coast Guard, telephone 202-267-0421, e-mail [Gburns@comdt.uscg.mil](mailto:Gburns@comdt.uscg.mil) as soon as possible.

Dated: October 12, 2000.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00-26767 Filed 10-17-00; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF THE TREASURY

### Customs Service

#### List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

**DATES:** This document notifies the public of the semiannual list for the 6-

month period starting October 1, 2000, and ending March 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** For information regarding any of the operational aspects, contact Mirta Gonzalez, Seizures and Penalties Division, Office of Field Operations, (202) 927-0410. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927-6900.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103-465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a

petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

**Reasonable Care Required**

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the

documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On March 30, 2000, Customs published a Notice in the **Federal Register** (65 FR 17003) which identified 25 (twenty-five) entities which fell within the purview of section 592A of the Tariff Act of 1930.

**592A List**

For the period ending September 30, 2000, Customs has identified 24 (twenty-four) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects one new entity and two removals to the 25 entities named on the list published on March 30, 2000. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as



having terminated the administrative process.

The names and addresses of the 24 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 24 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Austin Pang Gloves & Garments Factory, Ltd., Jade Heights, 52 Tai Chung Kiu Road, Flat G, 19/F, Shatin, New Territories, Hong Kong. (10/99)  
 Beautiful Flower Glove Manufactory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 10–16, 4/F, Yuen Long, New Territories, Hong Kong. (10/99)  
 BF Manufacturing Company, Kar Wah Industrial Building, Leung Yip Street, Flat 13, 4/F, Yuen Long, New Territories, Hong Kong. (10/99)  
 Ease Keep, Ltd., 750 Nathan Road, Room 115, Kowloon, Hong Kong. (10/99)  
 Excelsior Industrial Company, 311–313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)  
 Eun Sung Guatemala, S.A., 13 Calle 3–62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)  
 Everlast Glove Factory, Goldfield Industrial Centre, 1 Sui Wo Road, Room 15, 15th Floor, Fo Tan, Shatin, New Territories, Hong Kong. (3/99)  
 Fabrica de Artigos de Vestuario E-Full, Lda. Rua Um doi Bairro da Concordia, Deificio Industrial Vang Tai, 8th Floor, A–D, Macau. (10/99)  
 Fabrica de Artigos de Vestuario Fan Wek Limitada, Av. Venceslau de Moraes, S/N 14 B–C, Centro Ind. Keck Seng (Torre 1), Macau. (10/99)  
 Fabrica de Artigos de Vestuario Pou Chi, Avenida General Castelo Branco, 13, Andar, “C” Edificio Wang Kai, Macau. (10/99)  
 Glory Growth Trading Company, No. 6 Ping Street, Flat 7–10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)  
 G.P. Wedding Service Centre, Lee Hing Industrial Building, 10 Cheung Yue Street 11th Floor, Cheung Sha Wan, Kowloon, Hong Kong. (10/00)  
 Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82–86 Wing Lok Street, Central, Hong Kong. (9/98)  
 G.T. Plus Ltd., Kowloon Centre, 29–43 Ashley Road, 4/F, Tsimshatsui, Kowloon, Hong Kong. (3/99)  
 Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60

Zhangqian Road, Nanchang, China. (3/98)

Liable Trading Company, 1103 Kai Tak Commercial Building, 62–72 Stanley Street, Kowloon, Hong Kong. (9/98)  
 Lucky Mind Industrial Limited, Lincoln Centre, 20 Yip Fung Street, Flat 11, 5/F, Fan Ling, New Territories, Hong Kong. (10/99)  
 Mabco Limited, 6/F VIP Commercial Centre, 116–120 Canton Road, Kowloon, Hong Kong. (3/99)  
 McKowan Lowe & Company Limited, 1001–1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)  
 Rex Industries Limited, VIP Commercial Center, 116–120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)  
 Sannies Garment Factory, 35–41 Tai Lin Pai Road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)  
 Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1–2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)  
 Sun Kong Glove Factory, 188 San Wan Road, Units 32–35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)  
 Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)  
 Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

#### Additional Foreign Entities

In the March 30, 2000, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 32 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 32 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

In this document, a new list is being published which contains the names and last known addresses of 26 entities. This reflects the removal of six entities from the list of 32 entities published on March 30, 2000.

Customs is soliciting information regarding the whereabouts of the following 26 foreign entities concerning

alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):  
 Au Mi Wedding Dresses Company, Dragon Industry Building, 98, King Law Street, Unit F, 9/F, Lai Chi Kok, Kowloon, Hong Kong. (10/99)  
 Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)  
 Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)  
 Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor “UV”, Macau. (3/98)  
 Fabrica de Artigos de Vestuario Lei Kou, No. 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)  
 Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)  
 Galaxy Gloves Factory, Anknung Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)  
 Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)  
 Golden Wheel Garment Factory, Flat A, 10/F, Tontex Industrial Building, 2–4 Sheung Hei Street, San Po Kong, Kowloon, Hong Kong. (10/99)  
 Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)  
 K & J Enterprises, Witty Commercial Building, 1A–1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)  
 Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)  
 Kwuk Yuk Garment Factory, Kwong Industrial Building, 39–41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)  
 Lai Cheong Gloves Factory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 101, 1–F, Yuen Long, New Territories, Hong Kong. (3/00)  
 Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)  
 Maxwell Garment Factory, Unit C, 21/F, 78–84, Wang Lung Street, Tseun Wan, New Territories, Hong Kong. (3/99)  
 New Leo Garment Factory Ltd, Galaxy Factory Building, 25–27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)

Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Tak Hing Textile Company Limited, Wo Fung Industrial Building, 3/F, block D, Lot No. 5180, IN D.D 51, On Lok Village, Fanling, New Territories, Hong Kong. (3/99)

Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon Hong Kong. (3/98)

Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)

Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)

Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)

Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5–8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)

Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk

Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)

If you have any information as to a correct mailing address for any of the above 26 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Dated: October 12, 2000

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–26669 Filed 10–17–00; 8:45 am]

**BILLING CODE 4820–02–P**



# Federal Register

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**Wednesday,  
October 18, 2000**

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## **Part II**

## **Environmental Protection Agency**

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**40 CFR Part 63**

**National Emission Standards for  
Hazardous Air Pollutants: Rubber Tire  
Manufacturing; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[FRL-6874-9]

RIN 2060-AG29

**National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at rubber tire manufacturing facilities. The EPA has identified rubber tire manufacturing facilities as major sources of hazardous air pollutants (HAP) emissions. These proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that would be controlled with this action include toluene and hexane. These HAP are associated with a variety of adverse health effects including chronic health disorders (e.g., polyneuropathy, degenerative lesions of the nasal cavity) and acute health disorders (e.g., respiratory irritation, headaches).

**DATES:** *Comments.* Submit comments on or before December 18, 2000.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by November 7, 2000, a public hearing will be held on November 17, 2000.

**ADDRESSES:** *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-97-14, Room M-1500, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will be held at 10 a.m. in the EPA's Office of Administration's Auditorium in Research Triangle Park,

North Carolina, or at an alternate site nearby.

*Docket.* Docket No. A-97-14 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed standards, contact Mr. Anthony Wayne, Policy Planning and Standards Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5439, electronic mail address wayne.tony@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by electronic mail (e-mail) to: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1, or Corel® 8 file format. All comments and data submitted in electronic form must note the docket number (Docket No. A-97-14). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OAQPS Document Control Officer, U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public

without further notice to the commenter.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Dorothy Apple, Policy Planning and Standards Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-4487 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Apple to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

*Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

*Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC #/NAICS <sup>a</sup>	Examples of regulated entities
Industry .....	3011 or 7534/ .....	Owners or operators of rubber tire manufacturing facilities.

<sup>a</sup> Standard Industrial Classification Code.

<sup>b</sup> North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.5981 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *Outline.* The information in this preamble is organized as follows.

#### I. Background

- A. What is the source of authority for developing NESHAP?
- B. What criteria are used in developing NESHAP?
- C. What is the history of the listing and schedule for regulation for the rubber tire manufacturing source category?
- D. What are the health effects associated with rubber tire manufacturing?
- E. Rubber Manufacturers Association Survey

#### II. Summary of Proposed Rule

- A. What sources are included in the category and subcategories regulated by this rule?
- B. What are the primary sources of emissions and what are the emissions?
- C. What are the affected sources?
- D. What are the emission limits, operating limits, and other standards?
- E. What are the testing and initial compliance requirements?
- F. What are the continuous compliance provisions?
- G. What are the notification, recordkeeping, and reporting requirements?

#### III. Rationale for Selecting the Proposed Standards

- A. How did we select the source category and subcategories?
- B. How did we select the affected sources?
- C. How did we determine the basis and level of the proposed standards for existing and new sources?
- D. How did we select the format of the standards?
- E. How did we select the compliance, monitoring, recordkeeping, and reporting requirements?
- F. What is the relationship of this subpart to new source performance standards (NSPS) for the rubber tire manufacturing industry?

#### IV. Summary of Environmental, Energy, and Economic Impacts

- A. What are the air quality impacts?
- B. What are the cost impacts?
- C. What are the economic impacts?
- D. What are the non-air health, environmental, and energy impacts?

#### V. Solicitation of Comments and Public Participation

#### VI. Administrative Requirements

- A. Executive Order 12866—Regulatory Planning and Review

- B. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
- C. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
- D. Executive Order 13132—Federalism
- E. Unfunded Mandates Reform Act of 1995
- F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq*
- G. Paperwork Reduction Act
- H. National Technology Transfer and Advancement Act of 1995

#### I. Background

##### A. What Is the Source of Authority for Developing NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area and under common control that emit or have the potential to emit, considering controls, 10 ton/yr or more of any one HAP or 25 ton/yr or more of any combination of HAP.

##### B. What Criteria Are Used in Developing NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The “MACT floor” is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for

categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control requirements that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

##### C. What Is the History of the Listing and Schedule for Regulation for the Rubber Tire Manufacturing Source Category?

##### 1. Establishing the Initial List and Schedule

Pursuant to the various specific listing requirements of section 112(c), we published a list of 174 categories of major and area sources referred to as the “initial list” that would be subject to emission standards. Following this listing, pursuant to requirements in section 112(e), on December 3, 1993 (58 FR 63941), we published a schedule for the promulgation of emission standards for each of the 174 listed source categories. The schedule for standards organized the source categories into groups of four separate timeframes with promulgation deadlines of November 15, 1992; November 15, 1994; November 15, 1997; or November 15, 2000.

“Tire Production” is one of the 174 categories of sources included on the initial list of source categories (63 FR 7155). The “Tire Production” category as defined in our report, “Documentation for Developing the Initial Source Category List,” EPA-450/3-91-0310, July 1992, includes any facility that is a major source and is engaged in producing passenger car and light duty truck tires, heavy duty truck tires, off-the-road tires, aircraft tires, and miscellaneous other tires. The listed “tire production” source category name was changed to “rubber tire manufacturing” to better reflect the industry that would be regulated under section 112(d)(2) based on information obtained during the MACT standard development process.

##### 2. Listing of the Tire Manufacturing Source Category as a Section 112(c)(6) HAP Source

Section 112(c)(6) of the CAA requires that sources that account for 90 percent of the emissions of seven specified HAP, including hexachlorobenzene (HCB) and polycyclic organic matter (POM), be subject to standards under section 112(d)(2) or (d)(4).

Based on previous information and testing, we estimated that tire production facilities emitted, in aggregate, approximately 395 kilograms (kg) (869 pounds (lbs)), or 29.5 percent, of the total national anthropogenic emissions of HCB per year. Tire production facilities were also estimated to emit, in aggregate, approximately 6,360 kg (14,000 lbs), or 0.03 percent, of the total national anthropogenic emissions of POM per year (63 FR 17838). On April 10, 1998 (63 FR 17838), we listed tire manufacturing as a source category for possible regulation to meet section 112(c)(6) requirements. Because tire manufacturing was already included on the initial major source category list developed to comply with section 112(c), the major source category list did not need to be modified to add it.

The Rubber Manufacturers Association (RMA) responded to the listing of tire manufacturing as a section 112(c)(6) emissions source for HCB by sending us a letter that argued that the tire manufacturing process does not have a chemical or physical mechanism to form HCB. The RMA explained that the analytical results that led us to list tire manufacturing as a source of HCB emissions were based on contaminated samples. In response to RMA's comment, we participated in the planning of, and were present at, tests that were conducted to evaluate RMA's claim. These tests were reconstructed based on the conditions of the original tests. Based on our participation and evaluation of these tests, we agree that the original HCB emission information was incorrect. Based on the limitations of the original tests, and the fact that no HCB was measured in the re-testing, we concluded that tire manufacturing is a highly unlikely source of HCB emissions. We are addressing the April 10, 1998 listing under section 112(c)(6) of tire manufacturing as an HCB emission source in a separate **Federal Register** action.

The POM emissions leading to tire manufacturing being listed as a section 112(c)(6) emission source are due to combustion associated with the use of steam boilers in the rubber tire manufacturing process. These boilers will be addressed under the Industrial, Commercial and Institutional Boiler and Process Heater NESHAP.

#### *D. What Are the Health Effects Associated With Rubber Tire Manufacturing?*

This proposed rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA.

The sources of HAP emissions in the rubber tire manufacturing industry are: (1) Rubber processing; (2) the use of cements, solvents and associated mixtures in the tire production; (3) tire cord production; and (4) puncture sealant application. The primary HAP emitted from the rubber tire production process and puncture sealant operations are toluene and hexane. Tire cord operations also emit these HAP, but the more significant emissions from tire cord production are formaldehyde, styrene, and methanol. Exposure to these compounds has been demonstrated to cause adverse health effects.

The HAP that would be controlled with this proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (e.g., effects on the central nervous system and reproductive systems) and acute health disorders (e.g., irritation of eyes, throat, and mucous membranes, headache, nausea, and blurred vision). One of the HAP has been classified as a probable human carcinogen, and another has been classified as a possible human carcinogen.

#### 1. Toluene

Acute (short-term) inhalation exposure of humans to low or moderate levels of toluene has been associated with central nervous system (CNS) dysfunction and narcosis. Symptoms observed include fatigue, sleepiness, headaches, and nausea. Acute inhalation exposure to toluene has also been associated with cardiac arrhythmias (irregular heartbeats). Central nervous system depression and death have occurred at higher levels of exposure to toluene.

Chronic (long-term) inhalation exposure of humans to high levels of toluene has been associated with CNS depression. Symptoms observed include ataxia, tremors, cerebral atrophy, involuntary eye movements, and impaired speech, hearing, and vision. Chronic inhalation exposure of humans to toluene has also been associated with irritation of the upper respiratory tract, eye irritation, sore throat, nausea, skin conditions, dizziness, headaches, and difficulty with sleep. Chronic inhalation exposure to toluene has been associated with adverse effects on the liver, kidney, and lungs. Human studies of solvent vapor abusers indicate that there may be liver and kidney adverse effects resulting from chronic inhalation exposure to toluene, however, these studies are confounded by probable exposure to multiple solvents.

Children of pregnant women exposed to toluene or mixed solvent by inhalation have been observed to have CNS dysfunction, attention deficits, craniofacial and limb anomalies, and developmental and growth retardation.

#### 2. Hexane

Acute (short-term) inhalation exposure of humans to hexane is associated with mild CNS depression and irritation of the mucous membranes. Central nervous system effects include dizziness, giddiness, slight nausea, and headache. Acute exposure to hexane vapors may also cause dermatitis and irritation of the eyes and throat in humans.

Chronic (long-term) exposure of humans to hexane is associated with polyneuropathy in humans, with numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. Studies of animals chronically exposed to hexane by inhalation indicate neurotoxic effects, and mild inflammatory, erosive, and degenerative lesions in the olfactory and respiratory epithelium of the nasal cavity.

#### 3. Formaldehyde

Both acute (short-term) and chronic (long-term) exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. We consider formaldehyde a probable human carcinogen (Group B2).

#### 4. Methanol

Acute (short-term) or chronic (long-term) exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. We have not classified methanol with respect to carcinogenicity.

## 5. Styrene

Acute (short-term) exposure to styrene in humans results in mucous membrane and eye irritation and gastrointestinal effects. Chronic (long-term) exposure to styrene in humans may cause effects on the CNS such as headache, fatigue, weakness, depression, and hearing loss. There is limited evidence that occupational exposure to styrene is associated with an increased frequency of spontaneous abortions and decreased frequency of births and an increased risk of leukemia and lymphoma. We consider this evidence to be inconclusive. The International Agency for Research on Cancer (IARC) has classified styrene as a Group 2B, possible human carcinogen. We have not classified styrene with respect to carcinogenicity.

### *E. Rubber Manufacturers Association Survey*

Based on surveys of its member and non-member companies, the RMA compiled and provided us two comprehensive data bases on HAP emissions and controls at rubber tire and/or tire component producers and tire cord producers.

In 1997, the RMA surveyed the 46 known tire production facilities in the U.S. Each facility received a questionnaire designed to gather information on the quantity of HAP emissions and controls within the industry. The questionnaire requested the following information for calendar year 1996:

- General facility information such as facility name, address, parent company;
- Manufacturing information such as number of employees, products made, production rates, whether HAP-containing cements and solvents were used, and facilitywide HAP emissions;
- Specific process information such as the individual processes used, the number of processes used, and general information on hooding, ducting and control devices;
- Detailed information on the HAP-containing material used and the processes where the material is used, the type of material, the density of the material, and the total HAP usage; and
- Information on air pollution control devices (APCD) including the process controlled, the type of APCD, exhaust flow rate, control efficiency, reason for installation of APCD, and economics associated with installation of APCD.

Of the 46 facilities receiving the questionnaire, 42 (91 percent) responded, including all the major tire production facilities and parent companies. The RMA estimated that 41

of these facilities produce more than 99 percent of the rubber tires produced in the U.S. Thirty-one of the 42 reporting facilities have indicated potential emissions which would qualify the facility as a major source pursuant to section 112 of the CAA. One of the 42 responding facilities does not manufacture rubber tires, but rather mixes rubber compound for distribution to noncontiguous manufacturing facilities. This facility is within the scope of the rubber tire manufacturing source category because it mixes rubber compound, which is a basic material for the manufacturing of specific components of rubber tires.

In 1998, the RMA surveyed the twelve known tire cord production facilities. Each of these facilities received a questionnaire designed to gather information on the quantity of HAP emissions and controls within the tire cord production industry. The questionnaire requested the following information for calendar year 1997:

- General facility information such as facility name, address, parent company, number of employees;
- Production information such as the quantity of fabric processed, whether the facility provides treated fabric to non-tire manufacturers, and whether the dip (coating solution) mixing equipment and/or storage tanks have HAP emission controls; and
- Specific process information including the individual processes used, the number of processes used, air pollution control equipment used and its efficiencies, ventilation rates, costs of air pollution control equipment, annual HAP emissions, and general chemical characteristics of coating solutions.

All twelve facilities responded. Eight of the facilities represent over 90 percent of the domestic tire cord produced in the U.S. At least four of these facilities appear to be major sources based on their reported potential emissions. The RMA survey responses include eleven facilities that reported they did not use or emit HAP associated with cements, solvents, or mixtures.

In order to standardize responses and minimize the collection burden, the RMA questionnaires provided guidance for respondents on how to report usage of HAP-containing compounds (*i.e.*, cements, solvents and associated mixtures used in the manufacture of rubber tires). In particular, to prevent respondents from having to estimate very small concentrations of HAP in their HAP-containing materials, the questionnaires focused on collecting information on the significant cements, solvents and associated mixtures (or

sealants) used at each facility. The guidance used in these questionnaires was based on the Superfund Amendments and Reauthorization Act (SARA) de minimis reporting threshold limitations for HAP-containing compounds. Thus, facilities reported the use of only those solvents, cements or related mixtures having HAP concentrations greater than these de minimis levels.

The SARA de minimis thresholds for reporting for each component in a mixture are 0.1 percent by weight for some selected hazardous chemicals (see table 16 of this proposed rule for a list of these chemicals) and 1.0 percent by weight for all other hazardous chemicals (§ 370.28(b) of 40 CFR part 370-Hazardous Chemical Reporting: Community Right-To-Know). This means if the weight percent of a HAP in a cement, solvent or related mixture used was 0.1 percent or less for selected HAP or 1.0 percent or less for all other HAP, it did not have to be accounted for in the emissions information reported in the RMA questionnaire. Thus, if the information reported in the data base indicates that a rubber tire manufacturing facility has "none or zero potential or actual HAP emissions," the facility may still have actual HAP emissions below the accountable quantities in the guidance. Based on this information, a rubber tire manufacturing facility reporting "none or zero potential or actual HAP emissions" from cements, solvents and associated mixtures could be using cements, solvents or related mixtures containing up to 0.1 percent of a "selected" HAP or 1.0 percent of all other HAP by mass.

Using this de minimis cutoff for accounting of the HAP at a facility, the companies compiled their annual emissions of HAP on the basis of HAP use for 1996. In the cases where they reported they did have HAP, they accounted for the HAP used in the processes (liquids) and then equated the use to 100 percent emissions of HAP.

## II. Summary of Proposed Rule

### *A. What Sources Are Included in the Category and Subcategories Regulated by This Rule?*

We have defined the rubber tire manufacturing source category to include: The construction of rubber tires and components integral to rubber tires, the production of tire cord, and the application of puncture sealant. Components of rubber tires include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, and liners. Other components often associated with rubber tires but not integral to the tire,



such as wheels, valve stems, and inner tubes, are not included in our definition of components of rubber tires and would not be subject to the requirements proposed with today's action. For purposes of regulation, we have subcategorized this source category as follows: (1) Rubber processing, (2) tire production, (3) tire cord production, and (4) puncture sealant application.

#### *B. What Are the Primary Sources of Emissions and What Are the Emissions?*

The primary sources of HAP emissions in the rubber tire production industry are: (1) Rubber processing; (2) the use of cements, solvents and associated mixtures for tire production; (3) tire cord production; and (4) puncture sealant application. Other HAP emission sources include storage vessels that contain cements, solvents and associated mixtures, wastewater, and research and development areas.

#### 1. Rubber Processing

Rubber processing consists of the combination and mixing of various ingredients used to make mixed rubber compound, and the processing of the mixed rubber compound into components that make up a tire. The primary source of organic HAP emissions from rubber processing is the initial rubber compounding (*e.g.*, mixing, milling, and extrusion) prior to the application of solvents and cement. During the initial rubber compounding, process materials including natural rubber, synthetic rubber, plasticizers (*e.g.*, oils and waxes), curatives (*e.g.*, sulfur), antioxidants, and reinforcements (*e.g.*, silica, carbon black and resins) are mixed together in large mixers, called "banburys," to make a particular rubber compound. Little or no HAP are added as raw materials to make the rubber compound.

The physical breakdown of synthetic and natural rubber polymers during mixing results in HAP emissions such as styrene and butadiene emissions. Heat generated by the physical nature of compound mixing and added curing agents also causes HAP emissions (*e.g.*, carbon black and sulfur chemically combine to form carbon disulfide). Actual emissions from rubber compounding operations and other mechanical warming of the compounds (*e.g.*, milling) are approximately 829 megagrams per year (Mg/yr) (914 tons/yr). This is approximately 46 percent of the total annual tire production emissions in 1996.

Six generic rubber compounds are used to manufacture rubber tires. A seventh compound is manufactured for use as bladder material in the curing

presses. Manufacturers modify these six compounds into proprietary rubber compounds to meet company-specified tire performance criteria and functions. We considered whether the use of different compounds, as well as differences in the sequence and nature of some of the intermediate processing steps, affects our overall analysis of the rubber processing operation. We concluded that, despite the use of these proprietary compounds, the overall steps taken to process the rubber and subsequently manufacture the tires are essentially the same across the industry.

#### 2. Tire Production

Various cements, solvents and related mixtures are used in producing tires and tire components. Tire production processes where these cements and solvents may be used include extruding, tread stock cementing, side wall cementing, bead cementing, liner tack operations, tire building, curing press spray operations, and finishing paint operations. Cements and solvents are defined in § 63.6015 of the proposed rule as:

\* \* \* the collection of all organic chemicals, mixtures of chemicals, and compounds used in the production of rubber tires, including cements, solvents, and mixtures thereof as process aides in storage tanks, wastewater, and research and development areas. Cements and solvents include, but are not limited to, tread end cements, undertread cements, bead cements, tire building cements and solvents, green tire spray, blemish repair paints, side wall protective paints, marking inks, general cleaning solvents, and slab dip mixtures. Cements and solvents do not include coatings used in tire cord production, puncture sealant application, or chemicals and compounds that are not used in the tire production process such as restroom cleaning compounds, office supplies (*e.g.*, dry-erase markers, correction fluid), architectural paint, or any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

We estimate that processes using cements and solvents account for 54 percent of the HAP emissions associated with the tire production industry, including emissions from storage vessels, wastewater, and research and development areas.

Cements and solvents are used for many purposes. For example, they may be used in "cement" application to generate a tacky surface for temporary binding of components prior to curing. In addition, they are often used for marking lines on rubber components for identification and component alignment at tire building. They may also be used

as constituents in green tire lubricant spray, blemish paint used in tire finishing, and coatings used in white wall protection.

The RMA rubber tire manufacturing survey for the 1996 calendar year estimated potential HAP emissions from the usage of cements and solvents and sealants to be 1,280 Mg/yr (1,411 tons/yr). One operation, tread-end cementing, accounted for approximately 30 percent of these emissions, 383 Mg/yr (422 tons/yr). The 1996 estimated emissions of HAP associated with cements, solvents and associated mixtures for other operations are presented in table 1 as follows:

TABLE 1.—ESTIMATED EMISSIONS FROM CEMENTS AND SOLVENTS USAGE IN TIRE PRODUCTION  
[1997 RMA tire production survey]

Operation	1996 estimated emissions, mg/yr (tons/yr)
Tread-end cementing .....	383 (422)
Undertread cement .....	187 (207)
Bead cementing .....	40 (44)
Green tire spray .....	191 (211)
Cement house .....	34 (37)
Tanks .....	5 (6)
Miscellaneous cement and solvent use.	439 (484)

#### 3. Tire Cord Production

Tire cord is an integral sidewall component of rubber tires and is used primarily to provide resistance to sidewall flexing. In tire cord production, fibers or fabric are processed into a prepared fabric substrate which is subsequently used to prepare sidewall components. Tire cord production is a separate subcategory for purposes of this proposed rule because the process of tire cord production is significantly different from other tire component and tire manufacturing operations. The process of tire cord production also lends itself to separate and specific HAP controls.

Tire cord is produced by coating a continuous web of woven fabric by dipping it in an aqueous, latex-resin solution and then heating and drying the coated fabric. This is typically accomplished in a three-step production process. First, the fabric is dipped in the coating solution. Next, the coated fabric is typically heated and dried. Finally, the coated fabric is subjected to an

elevated temperature to heat set the fabric and polymerize the coating solution. The coating of the fabric ensures that a strong bond is formed between the tire cord fabric and a subsequently applied rubber compound in calendaring.

Tire cord production is an integral part of tire manufacturing because tire cord is a major sub-component of the sidewall component of the tire manufacturing process. Tire cord production may be, but is not typically, located at a tire production facility. Tire cord is manufactured at twelve facilities in the U.S.

Organic HAP emissions from tire cord production result from the coating solutions used to prepare the fabric. The coating solution used is an aqueous, latex-resin adhesive that typically consists of a mixture of resorcinol, formaldehyde, and latex. Actual HAP emissions associated with the tire cord production are estimated to be about 91 Mg/yr (100 tons/yr). However, depending on the formula of the coating solution and the type of fabric, HAP emissions for individual products can be minimal or even zero. The coating solution formulations used at each tire cord production facility are proprietary and have been developed to meet a company's specific requirements for the tires in which the tire cord will be used. In addition to limiting the amount of HAP in coatings, sources may control organic HAP emissions from tire cord production by using various add-on pollution control devices (e.g., thermal oxidizers, carbon adsorbers).

#### 4. Puncture Sealant Application

Emissions from puncture sealant application occur from the application of a mixture containing solvent constituents, rubber, and process oil to the inner liner of a completely manufactured tire. The puncture sealant mixture contains organic HAP that volatilize during the application process.

The 1997 RMA survey included one puncture sealant application process. The survey estimated HAP emissions from this puncture sealant application process to be approximately 15 Mg/yr (17 tons/yr). The main HAP emitted is hexane.

The application of the solvent mixture at the one facility occurs in a spray booth which is reported to meet the requirements of our definition of a permanent total enclosure (PTE) (40 CFR part 52, appendix A, Method 204). Approximately 56 percent of the applied puncture sealant mixture volatile composition is volatilized in the application booth and captured and sent

to the control device. The remaining 44 percent of the HAP and non-HAP volatile material remains in the tire. In order for the sealant to work properly over the life of the tire, nearly all of the volatile compound containing material remaining (89 percent or more of the remaining 44 percent) must be retained in the applied puncture sealant mixture. The sealant's purpose is to seal any future hole which might occur in the tread when an object penetrates the tire.

#### 5. Storage, Transfer and Mixing Vessels Containing Cements and Solvents

Storage, transfer and mixing vessels containing cements and solvents and coatings are a potential source of HAP emissions at rubber tire manufacturing facilities. Separate facilities are used (except in bulk chemical storage) by each of the affected categories and subcategories. The majority of these emissions come from the cement house at tire production facilities (the principle distribution center within a facility), from mixing and storage areas within the tire cord production process areas, and at the point of use for tire production processes. Organic HAP emissions result from evaporative losses from cement and solvent storage and transfer and mixing operations.

#### 6. Wastewater

Wastewater is another potential source of HAP emissions in the rubber tire manufacturing process. The HAP emissions from wastewater are generated during cooling and washing of various rubber tire manufacturing equipment and components.

#### 7. Research and Development Areas

Most tire manufacturing facilities have research and development areas, including laboratories, for the purpose of testing new manufacturing protocols or developing new and improved tire technology. These research and development areas may or may not be at the manufacturing site and may have pilot plants sized to do laboratory scale research. Research and development facilities would be covered by the emission limits in the proposed standards. Research and development areas may use and emit HAP from cements and solvents.

Typically, research and development operations resemble laboratories where formulations of rubber compounds and cements and solvents are analyzed for future applications. The research facilities may also use existing plant equipment to test these newly developed formulations. Typically, several tires (as many as 100) may be produced to evaluate various desired

qualities of the compound. The HAP emissions associated with research and development are a relatively small source in comparison to the HAP emissions from other sources at the facility. The majority of these emissions are produced during experimental tire building using the existing equipment normally used for production.

#### C. What Are the Affected Sources?

An affected source is a stationary source, group of stationary sources, or part of a stationary source regulated by the NESHAP. Within a source category or subcategory, we select the emission sources (emission points or groupings of emission points) that will make up the affected source. Each of these affected sources emits or has the potential to emit one or more of the HAP listed in section 112 of the CAA.

For purposes of this proposed rule, we have divided the rubber tire manufacturing source category into four source subcategories: (1) Rubber processing, (2) tire production, (3) tire cord production, and (4) puncture sealant application.

##### 1. Rubber Processing

The rubber processing affected source is the collection of all primary rubber mixing processes (e.g., banburys and associated drop mills) and mills that either mix compounds or warm rubber compound before the compound is processed into components of rubber tires. The mixed rubber compound itself is also included in the affected source.

##### 2. Tire Production

The affected source for the tire production source subcategory is the collection of all processes that use cements and solvents located at any rubber tire manufacturing facility. The affected source would include, but is not limited to: Storage and mixing vessels and the transfer equipment containing cements and/or solvents; wastewater handling and treatment operations; research and development operations; tread end cement operations; tire painting operations; ink and finish operations; undertread cement operations; general plant cleanup operations; bead cementing operations; tire building operations; green tire spray operations; extruding to the extent cements and solvents are used; cement house operations; marking operations; calendar operations to the extent solvents are used; tire stripping operations; tire repair operations; slab dip operations; other tire building operations to the extent that cements and solvents are used; balance pad operations; component production and

tire manufacturing machinery and plant cleaning; and other cement or solvent application operations in the tire manufacturing process. The tire production affected source does not include processes included in the rubber processing, the tire cord production, or the puncture sealant application source subcategories.

### 3. Tire Cord Production

The affected source for the tire cord production source subcategory is the collection of all processes engaged in the production of tire cord. The affected source includes, but is not limited to: dipping operations, drying ovens, heat-set ovens, bulk storage tanks, mixing facilities, general facility vents, air pollution control devices and warehouse storage vents.

### 4. Puncture Sealant Application

The affected source for the puncture sealant application source subcategory is the puncture sealant application booth operation used to apply puncture sealant to finished tires. For purposes of the proposed rule, we have defined puncture sealant to mean the mixture of solvent constituents, rubber, and process oil that is applied to the inner liner of a finished tire for the purpose of sealing a future hole in the tire.

### D. What Are the Emission Limits, Operating Limits, and Other Standards?

#### 1. Tire Production

For the tire production affected source, we are proposing to allow sources to choose one of two emission limitation options: (1) existing and new affected sources may choose to limit HAP emissions from the use of cements and solvents to no more than 1,000 grams per megagram of cement or solvent (2 pounds per ton) for each HAP listed in table 16 of the proposed rule, and 10,000 grams per megagram of cement or solvent (20 pounds per ton) for each HAP not listed in table 16; or, (2) existing and new affected sources may limit their total HAP emissions on a mass of total HAP per mass of rubber processed into tires. Specifically, if you own or operate an existing or new facility producing rubber tires, you must reduce the affected source emissions of HAP arising from cementing or solvent

application to less than 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires.

The tire production standard options (options 1 and 2) are emission limitations. The emission limitation in option 1 is based on the emissions projected if sources used only cements and solvents containing 0.1 mass percent of selected HAP (see table 16 in the proposed rule) and 1.0 mass percent for all other HAP. The projected emissions assume 100 percent of these HAP are emitted. The proposed rule provides three alternatives for showing compliance with the limitations in option 1:

- Use only cements and solvents that as purchased contain no more HAP than allowed by the specified emission limitations;
- Use cements and solvents such that the monthly average HAP emissions meet the specified emission limitations; or
- Use control devices to reduce HAP emissions such that the monthly average HAP emissions meet the specified emission limitations.

Option 2 provides the emission limitation corresponding to the emissions of total pounds of HAP (mass emitted) on a mass of rubber processed into tires (tons) over a monthly period. In other words, the emission standard is a monthly emission factor limitation associated with the production of tires. For each monthly period under option 2, you would be required to meet an emission limitation of 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires. Whereas option 1 limits individual HAP content (and therefore emissions), option 2 would limit total HAP content.

There are two compliance alternatives for meeting option 2, listed as follows:

- Use cements and solvents such that the monthly average HAP emissions meet the specified emissions limitations; or
- Use control devices to reduce HAP emissions such that the monthly average HAP emissions meet the specified emission limitations.

#### 2. Tire Cord Production

For the tire cord production source subcategory, we are proposing that

existing major sources meet a 280 grams per megagram fabric processed (0.56 pounds per ton fabric processed) HAP emission limit. For new major sources, we are proposing a HAP emission limit of 220 grams per megagram fabric processed (0.43 pounds per ton fabric processed).

In order to meet the proposed emission limitations, we are proposing that you meet one of the following two compliance alternatives: (1) Use coating solutions such that the monthly average HAP emissions do not exceed the applicable emission limit; or (2) use a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the applicable emission limitation.

### 3. Puncture Sealant Application

For existing sources in the puncture sealant application source subcategory, we are proposing that you reduce the total organic HAP emissions from all puncture sealant application booths by at least 86 percent by weight. For new sources, you would have to reduce emissions by 95 percent by weight. In addition, you would have to meet specified control and capture device operating limits to ensure the continued proper operation of the equipment.

You would have two compliance alternatives in meeting the proposed standards. The first is an overall control efficiency alternative. To comply with this alternative, you would use an emissions capture system and control device and demonstrate that the application booth emissions meet the specified emission limitations and operating limits. The second alternative is based on use of a permanent total enclosure. To comply with this alternative, you would use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51 and demonstrate that the control device meets the specified operating limits and reduces at least 86 percent of emissions for existing sources and 95 percent of emissions for new sources.

Table 2 summarizes the emission limitations for the tire production, tire cord production, and puncture sealant application affected sources.

TABLE 2.—EMISSION LIMITATIONS FOR AFFECTED SOURCES

Affected sources	Pollutant	Limit <sup>a</sup>
Existing, new or reconstructed tire production facility—Option 1.	Selected organic HAP (See Table 16 of proposed rule).	Emissions must not exceed 1,000 grams per megagram (2 pounds per ton) of the total cements and solvents.

TABLE 2.—EMISSION LIMITATIONS FOR AFFECTED SOURCES—Continued

Affected sources	Pollutant	Limit <sup>a</sup>
	All other organic HAP .....	Emissions must not exceed 10,000 grams per megagram (20 pounds per ton) of the total cements and solvents.
Existing, new or reconstructed tire production facility—Option 2.	Total organic HAP .....	Emissions must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires.
Existing tire cord production facility .....	Organic HAP .....	Emissions must not exceed 280 grams per megagram (0.56 pounds per ton) of fabric processed.
New or reconstructed tire cord production .....	Organic HAP .....	Emissions must not exceed 220 grams per megagram (0.43 pounds per ton) of fabric processed.
New or reconstructed puncture sealant application booth.	Organic HAP .....	Reduce booth emissions by at least 95 percent.
Existing puncture sealant application booth .....	Organic HAP .....	Reduce booth emissions by at least 86 percent.

<sup>a</sup>Emission limits are expressed as monthly average emission limits except for: (1) Tire production affected sources that comply by demonstrating that the cements and solvents that they use comply with the limit for every purchase; and (2) puncture sealant application affected sources must meet the emission reduction limit on a 3-hour average.

#### E. What Are the Testing and Initial Compliance Requirements?

Under the proposed standards, we require that you demonstrate initial compliance with each emission limitation standard that applies to you not later than 3 years after the date of publication of the final rule in the **Federal Register** for existing sources, and no later than 180 days from the date of initial startup of a new or reconstructed source. Existing area sources that subsequently become major sources have 3 years from the date they become a major source to come into compliance.

##### 1. Tire Production

If you have not purchased any materials (cements, solvents, mixtures, etc.) containing individual HAP above the levels prescribed in the HAP constituent emission limitations for tire production, you would be required to demonstrate initial compliance by submitting a Notification of Compliance Status report with a statement certifying that all cements and solvents purchased for use in the production of rubber tires meet the composition requirements specified in the proposed rule. Although you are not required to submit records to substantiate your statement of compliance, you would be required to maintain records that demonstrate that you are in compliance with the composition requirements of the option 1 emission limitation.

Alternatively, if you have cements and solvents containing HAP above the levels prescribed in the emission limitations for tire production but meet the composition requirements specified in the proposed rule when you also consider cements and solvents used that

do not contain HAP, you would be required to demonstrate compliance differently. You would be required to demonstrate initial compliance by submitting the Notification of Compliance Status report with a statement certifying that all cements and solvents as applied in the production of rubber tires meet the composition requirements specified in the proposed rule for the monthly (30-consecutive-day) period immediately preceding the compliance date of this proposed rule. This certification must include a list of all cements and solvents and mixtures thereof purchased for use for tire production, their quantities, and their individual HAP constituent compositions for the monthly period.

If you use materials containing HAP above the levels prescribed in the emission limitations for tire production, and you use one or more add-on control devices to comply with the proposed rule, you would be required to demonstrate initial compliance by submitting the Notification of Compliance Status report that includes the information outlined in the preceding paragraph, along with a statement certifying that your capture systems and control devices are being operated within the parameter values established during the required performance test(s) for demonstrating compliance with the proposed rule for the 30-consecutive-day period immediately preceding the compliance date. This certification would be required to be accompanied with the performance test report(s) and parameter values established during the performance test(s) for continuous compliance monitoring.

If you choose to comply with the emission limitation specified in option 2, you would be required to demonstrate initial compliance by submitting the Notification of Compliance Status report with a statement certifying that the mass of HAP used per mass of rubber processed into tires over the monthly (30-consecutive operating day) period preceding the compliance date did not exceed the limits specified. Your records to demonstrate this certification would, at a minimum, include a description of the measures taken (e.g., purchase of low-HAP-content solvents or cements), the total amount of cements and solvents used, the amount of HAP-containing solvents and cements used, and the operational status of any control equipment used in achieving some reduction in the HAP emissions.

Depending on the option and compliance alternative selected, you would be required to perform the following tests to support your demonstrations of compliance:

- Determine the HAP quantity and concentration of your cements and solvents or mixtures thereof using EPA Method 311 or other methods approved by the Administrator. If there is a disagreement between such information and Method 311 results, then the Method 311 results will take precedence.

- Perform a material balance on your cements and solvents used that accounts for all HAP emissions at the affected source. Determine the percent by weight of the individual constituents of the total cements and solvents used. Emission points that must be included in the material balance include, but are not be limited to, bulk storage tanks, mixing facilities, points of use in tire

manufacturing, general facility vents, air pollution control devices, wastewater fugitive emissions, research and development area vents, and warehouse storage vents.

- If option 2 is used, determine the quantity of rubber processed into tires by accounting for the total mass of rubber that enters the tire component production processes.

- For option 2, calculate the material balance and emission factor for your HAP emissions (mass HAP emitted per mass rubber processed into tires) and your monthly HAP emissions average. When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

- Calculate your HAP emissions rate for the monthly operating period immediately preceding the compliance date.

## 2. Tire Cord Production

To demonstrate initial compliance with the proposed standards for tire cord production affected sources, you would be required to submit a Notification of Compliance Status report with a statement certifying that for the monthly (30-consecutive operating day) period immediately preceding the compliance date of this proposed rule, your affected sources met the emission limitations specified in the proposed rule. You would be required to perform the following tests to support your demonstration:

- Determine the HAP quantity and concentration of your coating mixture using EPA Method 311 or other methods approved by the Administrator. If there is a disagreement between such information and Method 311 results, then the Method 311 results will take precedence.

- Perform a material balance on your coating mixture use that accounts for all HAP emissions from all emission points located at your facility. Emission points that must be included in the material balance include, but are not be limited to, bulk storage tanks, mixing facilities, points of use, general facility vents, air pollution control devices, wastewater, research and development areas, and warehouse storage vents. When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control

systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

- Determine your quantity of fabric processed by accounting for the total mass of fabric that enters the fabric treating process.

- Calculate your HAP emissions (mass HAP emitted per mass fabric processed) and your monthly HAP emissions average.

- Calculate your average HAP emissions rate for the monthly period immediately preceding the compliance date.

## 3. Puncture Sealant Application

To demonstrate compliance with the puncture sealant application standard, you must demonstrate compliance in one of two ways. First, you may choose to demonstrate the overall control efficiency of your emissions reductions system. In this case, you would demonstrate that the emissions capture system efficiency multiplied by the control device efficiency meets the applicable emissions limitation for the application booth emissions, and that your equipment meets the specified operating limits. You would demonstrate these efficiencies by conducting a performance test of the capture system and control device to determine their individual efficiencies. You would also establish operating parameters that you would subsequently monitor to demonstrate continuous compliance with the operating limits.

Alternatively, you could use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51. Use of a permanent total enclosure certifies 100 percent capture. Then, you would demonstrate that the control device reduces at least 86 percent of emissions for existing sources and 95 percent of emissions for new or reconstructed sources and meets the specified operating limits. As above, you would demonstrate the control device efficiency by conducting a performance test. You would also establish operating parameters that you would subsequently monitor to demonstrate compliance with the operating limits.

## F. What Are the Continuous Compliance Provisions?

The proposed standards require that you demonstrate continuous compliance with each emission limitation that applies to you. For the tire production, tire cord production, and puncture sealant application source subcategories, you would be required to

demonstrate continuous compliance by monitoring each of the following as applicable to the compliance plan of the affected source, in some instances, on a daily basis:

- Amounts of cements and solvents or coating mixtures used;
- HAP content of the cements and solvents or coating mixtures;
- Amount of fabric processed at tire cord production facilities;
- Amount of rubber processed into tires at tire production facilities; and
- Any add-on control equipment parameter values.

The monitoring data would be used to calculate the monthly average limits. In the proposed rule, we have provided the necessary algorithms for calculating the monthly averages.

## G. What Are the Notification, Recordkeeping, and Reporting Requirements?

We have incorporated most of the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) into the proposed rule. Exceptions have been specified, as relevant.

You would be required to submit the following notifications and reports:

- An Initial Notification within 120 days after the effective date of the promulgated standards for existing sources and within 120 days after the date of initial startup for new and reconstructed sources.

- If you are required to conduct a performance test, you would be required to submit a Notification of Intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin.

- If you have conducted a performance test to meet the requirements of this proposed rule, you would be required to submit a Notification of Compliance Status report that includes the performance test report. This report would be submitted before the close of business on the 60th calendar day following the completion of the performance test.

- A compliance report that either contains a statement that there were no deviations from the emission limitations and operating limits (if applicable) during the reporting period or that reports any deviations from the emission limitations. This report would be submitted semiannually except where a tire production affected facility has demonstrated compliance with the HAP-constituent emission limitation by purchasing and using only complying materials. In this case, the semiannual report will be replaced with an annual report.

- A periodic report is required every 6 months if a change occurs at the affected facility, or within the process that affects the compliance status, or that such change would have resulted in a report in the Initial Notification.

You would be required to maintain records for at least 5 years from the date of each record. You must retain the records onsite for at least the first 2 years but may retain the records offsite for the remaining 3 years. In addition to the general recordkeeping requirements of the General Provisions, you would be required to keep the following records:

- A copy of each notification and report that you submitted to comply with the proposed rule, including documentation supporting the Initial Notification or Notification of Compliance Status reports that you submitted.

- Records of performance tests and performance evaluations.

- For all processes that use cements and solvents in the manufacture of tires, you would be required to keep a daily record of the composition of all cements and solvents used and a monthly record of the quantity of cements and solvents used, as well as the mass weight of rubber processed into tires for tire production.

- For each air pollution control device (e.g., thermal oxidizer) associated with a process or processes that use cements and solvents in the production of tires, you would be required to keep a daily record of the mass percent of HAP in cements and solvents used, and a daily record of parameter values that indicate proper operation of the control device as determined during the performance tests.

- For each process or facility that produces tire cord, you would be required to keep a daily record of the mass of HAP in all coating mixtures used, the mass of HAP in coating mixtures that are not emitted (i.e., controlled by a control device), the mass of fabric processed, and a calculated emission factor that indicates your emissions on a monthly average.

- For each air pollution control device (e.g., thermal oxidizer) associated with a process or facility that produces tire cord, you would be required to keep a daily record of the mass of HAP in all coating mixtures used, the mass of HAP in coating mixtures that are not emitted (i.e., controlled by a control device), the mass of fabric processed, a daily record of any parameters, as determined during the performance tests, that indicate actual operation of the control device, and a calculated emission factor that indicates your emissions on a monthly average.

- For each air pollution control device (e.g., carbon absorber) associated with a process or facility that applies puncture sealant to the interior of finished tires, you would be required to keep a daily record of the mass of HAP in all coating mixtures used and a daily record of any parameters, as determined during the performance tests, that indicate actual operation of the control device.

### III. Rationale for Selecting the Proposed Standards

#### A. How Did We Select the Source Category and Subcategories?

We listed tire manufacturing as a category of major sources of HAP on the initial list of major source categories (63 FR 7155). The primary HAP emitted are hexane, toluene, formaldehyde, methanol, and styrene. In gathering and evaluating more extensive information on tire manufacturing, we determined that tire manufacturing actually includes several distinct processes that are sources of HAP, and that some operations are often not located at the same site. Specifically, rubber compound mixing is a distinct process; however, we found that a particular facility only mixed rubber for later distribution to its satellite tire manufacturing facilities. In addition, tire cord production is predominantly conducted at facilities not located with tire production facilities. On November 8, 1999 (64 FR 63025), we revised the source category list to change the name to "rubber tire manufacturing." The new name better describes the operations we propose to regulate in this source category which includes more than just "tire production."

The CAA allows us to define subcategories, or subsets of similar emission sources within a source category, if technical differences in emissions characteristics, processes, control device applicability, or opportunities for pollution prevention exist within the source category (57 FR 31567). Specific examples of these differences include the types of products, process equipment differences, the type and level of emission control, emission sources, and any other factors that would affect the MACT determination for a given source category.

We reviewed and analyzed available information on the rubber tire manufacturing industry to determine if subcategorization was warranted. We considered information similar to that used in other MACT standard subcategorization decisions including:

- Similarity of products produced at different facilities;
- Any variations in the process due to the tire type produced;
- Variability of raw or input materials used at different facilities;
- Type of equipment used in the process;
- Control device applicability and costs; and
- Pollution prevention opportunities.

Based on our review, we determined that there are fundamentally different processes with differing operations and emissions within the rubber tire manufacturing industry that warranted subcategorization. We identified four separate operations within the tire manufacturing source category that are significant sources of HAP emissions: (1) Rubber processing, (2) tire production, (3) tire cord production, and (4) puncture sealant application. Rubber processing includes mixing, milling, and extrusion rubber compounding operations prior to the application of solvents and cements. Tire production emission sources are associated with the use of cements and solvents (including emissions that result from storage, wastewater, and research and development). Tire cord production is infrequently located at a rubber tire production facility, and emission sources are associated with the coating solutions used to treat the fabric (including emissions that result from storage, wastewater, and research and development). Puncture sealant application is a separate operation where emissions are associated with the mixture that is applied to the inner liner of a newly finished tire for the purpose of sealing future punctures. The mixture contains solvent constituents, rubber, and process oils. We have prepared a memorandum supporting this subcategorization that you can obtain from the docket for this proposed rulemaking.

#### B. How Did We Select the Affected Sources?

The affected source comprises the emission points to which a standard applies for a source category or subcategory. As discussed in section II.C, an affected source is a stationary source, group of stationary sources, or part of a stationary source regulated by the NESHAP. When selecting the affected source for a source category or subcategory, we need to select the HAP emission sources that will make up the affected source. Our rationale for the selection of the affected sources within the tire production, tire cord production, and puncture sealant

application source subcategories is presented in the following paragraphs.

#### 1. Rubber Processing

As described in earlier sections, emissions from the rubber processing source subcategory occur from the operations where rubber is being mixed and prepared, before it is processed into components of rubber tires, and before cements and solvents are applied.

#### 2. Tire Production

As noted above, emissions from the tire production source subcategory are generally associated with the operations following rubber processing that involve the use of cements and solvents to assemble the tire.

Emissions from cements and solvents use over the past 20 years in tire production operations have been significantly reduced. The EPA data base for 1996 HAP emissions estimates that 1,280 Mg/yr (1,411 tons/yr) of organic HAP are emitted from tire production operations due to the use of cements and solvents. Though no hard data have been gathered, the industry estimates that this amount may be half the 1970–1980 levels of emissions. Reductions in organic HAP emissions leading up to our 1996 data base have been gained by the industry through reducing or eliminating the amount of cements and solvents used, or by reformulating the cements and solvents to reduce or eliminate their volatile organic compounds (VOC), including HAP content.

For example, tread-end cementing is estimated to use approximately 383 Mg/yr (422 tons/yr) of cements and solvents or about 30 percent of the total cements and solvents used in the rubber tire production industry. An analysis of the information submitted by RMA, and the information collected during EPA site evaluations, indicated that several facilities use cements and mixtures containing no reportable quantity of HAP. In contrast, the use of add-on pollution control devices to control emissions from cements and solvents use is atypical. Of the 41 reporting facilities in RMA's survey, a total of seven used control devices directed toward HAP organic emissions from cementing and solvent operations. Therefore, based on current and historic emissions control practices at tire production sources, we concluded that, although emissions are controllable using add-on control devices, the prevalent means of emissions control is the use of air pollution prevention measures. In selecting the affected source, we considered this

controllability of emissions as a key criterion.

We also considered the potential impact of reconstruction when selecting the affected source for tire production. We do not believe it is appropriate to require a facility to meet new source standards because it reconstructs one small process, such as replacing one tire building station, especially when such replacement in itself would not significantly affect emissions from the facility. Therefore, we selected the tire production affected source to be the collection of all processes that use cements and solvents located at a rubber tire manufacturing facility. This definition of affected source includes all operations within the facility where cements and solvents are used. As a result, reconstruction, which is defined in 40 CFR 63.2, will be determined by looking at the capital costs for replacing the entire affected source. Modifications to individual processes or operations should be less likely to trigger treatment as a reconstructed source.

#### 3. Tire Cord Production

As described later in this preamble, emissions from tire cord production can be controlled by add-on control devices, pollution prevention measures, or a combination of these two. Although some add-on control devices are used and will continue to be used at tire cord production processes, emissions reductions can be achieved by reducing the VOC (including HAP) content in the coating solutions or eliminating the emissions of VOC (including HAP) through process changes and substitution of materials.

Tire cord production facilities may have several different production lines and may produce several different types of tire cord in one facility. Although the coating solutions differ depending on the types of cord being produced, they are basically the same solution, consisting of a mixture of resorcinol, formaldehyde, and latex, with some changes in the formulation that are considered proprietary among tire cord producers.

Process changes and material substitutions, though not as common as they are for operations using cements and solvents in tire production, are being pursued as a way of controlling HAP emissions from tire cord operations. Despite these efforts, however, we believe emissions from tire cord sources will continue to be controlled at least in part using add-on control devices. In selecting the affected source, we considered this choice of controllability of emissions as a key criterion. Therefore, the standard

reflects the alternative to address emissions reductions through traditional add-on control or reformulation or elimination of HAP in the coating solutions used to treat tire cord fabric.

In selecting the affected source for the tire cord subcategory, we also considered the need for flexibility at the facility to modify operations without triggering treatment as a reconstructed source. As with the tire production affected source, we did not believe it was appropriate to cause a facility to have to meet new source standards because it reconstructs one small process, such as replacing one component of a particular tire cord production process. Therefore, we selected the affected source to be the collection of all processes located at any rubber tire manufacturing facility that are engaged in the production of tire cord.

#### 4. Puncture Sealant Application

For the puncture sealant application source subcategory, HAP emissions are generated from the application of the puncture sealant mixture to the interior of the newly finished tire. The HAP emissions come from the solvent constituents used in the mixtures. The application takes place within an enclosed application booth. The captured air stream is passed through a control device such as a carbon adsorber. The puncture sealant operation is a distinct operation and accounts for approximately 15 Mg/yr (17 tons/yr) of actual HAP emissions.

Unlike our other subcategories, the puncture sealant subcategory is comprised of a physically definable, lone emission source which is the application booth. Therefore, we have designated the emission source as the affected source.

#### *C. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?*

In establishing these proposed emission standards, we determined the MACT floor for each affected source. We evaluated add-on control technologies as well as work practices and pollution prevention techniques. We obtained data related to operating procedures and emissions for the rubber processing, tire production, tire cord production, and puncture sealant affected sources through a combination of site visits, the RMA surveys (see section I.D.) and discussions with the industry. Data from all these sources were considered in the selection of emission limits for individual emission points at rubber tire manufacturing facilities.



## 1. Rubber Processing

We determined that MACT for rubber processing is no control, and, therefore, there are no emission limitations or other requirements being proposed for the rubber processing affected source. In reaching the conclusion that MACT for rubber processing is no control, we first evaluated the floor and determined that the floor is no control. There are currently no organic emission add-on controls applied to these mixing and milling operations in the rubber tire industry. Based on the fact that some plants have lower emissions than others, we evaluated whether there is a MACT floor based on substitution of lower-HAP containing raw materials which could be used in the process. We learned that little or no HAP are added to the raw materials used to make the rubber compounds. The approximately 829 Mg/yr (914 tons/yr) of HAP emissions associated with rubber compound processing result from the physical breakdown of polymers during the mixing, and chemical reactions that occur when elevated temperatures in mixing and milling affect the individual rubber compounds. The rubber compounds used in tires must meet certain characteristic properties to ensure attainment of certain technical specifications such as high mileage and safety. There are no known substitutes for the basic ingredients used to make the individual rubber compounds that would result in lower HAP emissions. Thus, we concluded that there were no pollution prevention controls or procedures to form a basis for the MACT floor.

We also evaluated the possibility of going beyond the "no control" MACT floor in controlling the major emissions from the compounding and milling process. Specifically, we explored controlling the organic HAP emissions from rubber processing with add-on controls (*i.e.*, thermal oxidizers). We determined that, although feasible, such add-on controls were unreasonably expensive. Therefore, we concluded that the control of organic HAP beyond the floor would not be reasonable at this time.

## 2. Tire Production

Cements and solvents are widely used throughout the rubber tire manufacturing industry for many different purposes (see section II.B of this preamble for a description). The quantity of cements and solvents used annually varies significantly among facilities, from near zero at some facilities to nearly 300 tons at others. The emissions reported in the RMA

survey that comprise our data base reflect the total amount of volatile HAP used for the year. In other words, we assume that all of the volatile HAP contained in the cements and solvents used were emitted.

Emissions from the use of cements and solvents are controlled primarily through pollution prevention measures. These pollution prevention measures include reformulation to reduce or eliminate the HAP content of cements and solvents, reduction in the quantity of cements and solvents used, and elimination of cements and solvents use altogether. Some facilities change their process operations, which is another form of pollution prevention, to reduce their cementing needs. Specifically, they arrange and choreograph their component production processes, or time the production of components so that the delivery of components to tire building stations occurs within a short enough timeframe to avoid film build up on the uncured rubber compound. In some cases, component pre-cutting has been changed to on-demand cutting at the tire building station, eliminating the need to address film build up on the component material. These process changes eliminate the need for cements or solvents by ensuring that the rubber compound remains tacky and will stick to the other components.

Add-on control devices are also installed at tire production sources to reduce organic emissions from the application of cements and solvents, but their installation is sporadic. Typically, a capture system at the cement or solvent application area captures the immediate evaporation of the volatile HAP and directs the HAP to a thermal oxidation unit.

Because of the varying types and quantities of cements and solvents used in tire production, and the fact that emissions generated during their use are controlled primarily through pollution prevention measures, we believe that a process-by-process MACT floor based on a specific control technology would not be reasonable or appropriate for this affected source. Therefore, we decided to determine the MACT floor broadly to encompass the entire tire production affected source.

This approach for setting the MACT floor allows rubber tire production facilities greater flexibility for complying with the tire production standards by allowing facilities to consider total emissions from cements and solvents within the affected source rather than on a process-by-process basis. It also provides the facility the flexibility to mix and match the use of pollution prevention methods and the

use of add-on control devices to comply with the tire production standard.

Using a source-wide approach, we developed the MACT floor emission standards to reflect an individual HAP content emission limitation. We determined the MACT floor for tire production existing sources by calculating the average emission limitation achieved by the best performing 12 percent of the existing tire production sources for which we have data (41 facilities). Twelve percent of 41 is 4.92, so the MACT floor for the use of cements and solvents for the tire production affected source would be the average emission limitation of the best performing five sources.

In the 1997 RMA survey response, eleven rubber tire production facilities reported that they did not have reportable emissions or did not use HAP-containing cements and solvents or mixtures thereof in tire production. As a result, the average emission limitation of the top five facilities would initially appear to be zero HAP emissions. In the course of drafting this proposal, however, we discovered that the facilities reporting that they did not use HAP-containing cements and solvents were relying upon the de minimis reportable quantity thresholds for selected HAP (see section I.D. of preamble for discussion). We, therefore, interpret the facilities' reported "zero" HAP emissions from cements and solvents to mean that their cements and solvents may contain up to the reportable threshold quantities of HAP.

The MACT floor for new or reconstructed sources is set at the emissions achieved in practice by the best performing similar source. As discussed for the existing source MACT floor, several rubber tire production facilities reported that they did not have reportable HAP emissions from the use of cements and solvents. However, as explained above, we interpret the facilities' reported "zero" HAP emissions to mean that their cements and solvents may contain up to the de minimis reportable quantity levels. Thus, the MACT floor is the same for new and existing sources.

We also evaluated the possibility of going "beyond the MACT floor" for tire production sources. The floors for both existing and new sources, although not zero emissions, are very close to zero emissions. As a result, we evaluated the feasibility of eliminating all HAP emissions from tire production sources as an above-the-floor option for both existing and new sources. The estimated HAP emissions reductions associated with the tire production MACT floor is 949 Mg/yr (1,047 tons/yr). Total

elimination of all HAP in cements and solvents is estimated to reduce emissions by 946 Mg/yr (1,063 tons/yr). We, however, cannot assess the achievability of eliminating HAP emissions altogether because we lack information on the availability of adequate cements and solvents that truly contain no HAP at any concentration. We are seeking supporting information regarding an elimination of HAP in tire production by soliciting, through this proposal, any information regarding the elimination of HAP in cements and solvents used in tire production.

Based on the analysis described above, the standards for both existing and new tire production affected sources are based on the floor level of control and are expressed in terms of individual HAP content emission limitations. This emission limitation is identified as "option 1" in table 2.

Table 2 also includes a second emission limitation for tire production labeled as "option 2." Option 2 represents a second form of emission limitation based on the mass of HAP emitted per mass of rubber processed into tires. We have calculated the emission limit in option 2 to be at least as stringent as the MACT floor represented by option 1. In developing option 2, we concluded that, based on information available to us from the industry, there is a range of HAP constituents that may be present in the cement and solvent formulations but the typical formulation contains three HAP components. Assuming three components are used, under option 1, the typical cement/solvent formulation would contain approximately 3 percent HAP by weight. Using this figure, we calculated an emission limitation that we believe would be equivalent to option 1 for the source in the RMA data base with the lowest reported ratio of cement and solvent HAP content to rubber processed. Specifically, the reported annual HAP content for this facility was adjusted assuming a three component formulation (e.g., 800 pounds of HAP used  $\times$  0.03). As in option 1, we assume all HAP contained in the cements and solvents will be emitted. The resulting HAP emissions were then divided by annual rubber processed into tires, in tons, to achieve the mass of HAP per mass of rubber processed limitation.

We consider option 2 to be at least as stringent as option 1. For facilities other than the one used in our calculation, option 2 is arguably more stringent than the floor, but these other facilities are not forced to meet this limitation since option 1 is available and represents the

MACT floor. We are interested in comment on the reasonableness of this approach in establishing an option that is at least as stringent as the MACT floor and on alternative means of expressing option 2.

### 3. Tire Cord Production

The tire cord production process typically uses an aqueous solution containing a mixture of resorcinol, formaldehyde, and latex to coat a fabric, usually polyester or nylon. Heat is then used to set the fabric and polymerize the coating solution. The exact composition of the coating solutions are considered proprietary and vary between facilities. The composition of the coating solutions also varies with the type of fabric being coated.

Emissions from the tire cord production affected source are often controlled by using pollution prevention measures. These measures include replacing non-aqueous coating mixtures with aqueous coating mixtures and reducing the amount of HAP in the coating mixtures. Add-on control devices, though less common, are also used to reduce organic emissions. These control devices, however, are generally only used to control HAP emissions from select individual processes within the affected source. In fact, within the 12 tire cord production facilities there are: 19 dipping operations, only one of which uses an add-on control device to control HAP emissions; 18 heater-drying operations, only two of which use add-on control devices to control HAP emissions; and 19 heat set operations, only four of which use add-on control devices to control HAP emissions.

During our review and analysis of the tire cord production affected source, we discovered significant process and operation variations among tire cord production facilities. The variations we identified include the following:

- When add-on controls are used, organic emissions are controlled from different operations of the process, and different combinations of processes are controlled;
- HAP emissions reporting is not consistent among facilities (*i.e.*, some facilities believe HAP are emitted from one process while other facilities believe the HAP are emitted from a different process);
- Equipment is configured differently among facilities to produce the same product; and
- There are commonly several process lines within a tire cord production facility, each of which may be producing different types of tire cord using different coating solutions, and

equipment dedication, as well as the product lines, vary through the year.

Because of the varying use of different types of coating solutions, the significant process and operation variations among tire cord production facilities, and the fact that emissions from tire cord production are controlled primarily by using pollution prevention measures, we do not believe a process-by-process MACT floor based on a specific control technology is reasonable for this industry. Therefore, we determined that the MACT floor should be based more broadly to encompass the entire tire cord production source subcategory affected source. Some of the other reasons we chose to determine the MACT floor broadly include the following: (1) It allows tire cord production facilities greater flexibility for complying with the standards by allowing facilities to consider total emissions from coating operations within the entire facility rather than on a process-by-process basis, and (2) it allows the facility flexibility to mix and match the use of pollution prevention methods and add-on control devices to comply with the standard.

We used HAP annual emissions data and the annual fabric production from the tire cord production facility RMA survey data base (see section I.D. of this preamble) to calculate an emission rate, in pounds HAP emitted per ton of fabric processed, for the entire tire cord affected source for each facility. Because there are fewer than 30 sources manufacturing tire cord, we determined the MACT floor based on the average emissions achieved by the best performing five sources. The average emission rate was calculated to be 280 grams HAP emitted per megagram fabric processed (0.56 pounds HAP emitted per ton fabric processed) for existing tire cord production facilities.

The MACT floor for new sources is based on the emissions reductions achieved in practice by the best performing similar source. The best performing tire cord production facility has an emission rate of 220 grams HAP emitted per megagram fabric processed (0.43 pounds HAP emitted per ton fabric processed), which equals the new source MACT floor for tire cord production.

We also evaluated going "beyond the floor" for the tire cord production source subcategory. We did not identify any tire cord production facility that has eliminated the use of HAP-bearing coatings in their production process. Greater emissions reductions would, therefore, likely require the use of add-on control devices. We estimated that the average facility cost of achieving the

MACT for tire cord sources using add-on control devices (e.g., regenerative oxidation) would be approximately \$70,000 per ton of total HAP emissions reductions. The incremental cost effectiveness of using add-on control devices to go beyond the floor is expected to be higher. Because of these costs we are not proposing to adopt standards that require reductions beyond the MACT floor.

#### 4. Puncture Sealant Application

During the development of this proposed rule, we identified one manufacturing plant where tires equipped with puncture sealant are manufactured. As discussed previously, the puncture sealant application process involves the application of a puncture sealant mixture containing solvent constituents, rubber and process oil to the inner liner of a tire. Since the puncture sealant application source subcategory consists of only one plant, the MACT floor for an existing source is the emissions control that is employed at that plant, which we believe is represented by an overall control efficiency of 86 percent.

The current overall control equipment efficiency at this facility, however, is not as efficient as what has been achievable for the type of equipment used in other similar capture and control systems for volatile organic emission sources. A new source puncture sealant application affected facility would have to meet a more stringent control equipment requirement reflecting a demonstrated and achievable capture and control system commonly applied in volatile organic emission control. The overall control efficiency for new sources is 95 percent based on the use of a permanent total enclosure and a properly sized and operated control device, such as a carbon adsorber.

We evaluated the feasibility of going "beyond the floor" to establish MACT for the existing facility but determined, based on a review of the data, site evaluations, and input from industry, that it would be unreasonable to go "beyond the floor" in establishing MACT. The puncture sealant mixture formulation serves a specific market niche for consumers who want a relatively low-cost tire that is resistant to road hazards. Reformulation of the mixtures would be an impractical above-the-floor option because no alternative formulations have been identified that can provide the desired sealant capability. Requiring add-on controls in addition to or in place of the use of the existing carbon adsorption system on the single application booth

would result in an additional estimated annual reduction of 0.5 tons of HAP. Thermal oxidation (incineration) is a viable control for the one existing facility; however, the incremental costs of requiring the existing facility to remove the current carbon adsorber and replace it with a more efficient control system such as a thermal oxidation unit are unreasonable considering the incremental emissions reductions that would be achieved (approximately \$28,500 per ton per year).

#### *D. How Did We Select the Format of the Standards?*

##### 1. Tire Production

We are proposing mass emission limitations in the form of two options for the tire production source subcategory. Option 1 is expressed as a mass emission limit based on the HAP content of cements and solvents. This option limits the level of any individual HAP constituent in cements and solvents used in the tire production source. Option 2 is a total HAP mass emission limit based the tons of rubber processed. We believe that both of these options are appropriate for the following reasons.

First, these formats are consistent with the data base and approach used to derive them. They are also consistent with the approaches used by the industry to report emissions. In proposing these standards, we recognize that 11 individual facilities have eliminated or reformulated their cements and solvents to either eliminate HAP or significantly reduce their use in tire production. We further recognize that reformulation and elimination of cements and solvents have resulted in greater HAP emissions reductions than the use of add-on control devices. As a result, we believe that both the individual HAP constituent limitation, as well as the total mass HAP per mass rubber processed limitation, encourage further pollution prevention initiatives in the rubber tire production industry.

##### 2. Tire Cord Production

For tire cord production facilities, the standard chosen is a production-based standard expressed in units of mass of HAP emitted per mass of fabric processed. Therefore, we chose a production-based format in order to ensure that all regulated sources, even those with variable processes, would meet uniform standards. A production-based format also enables control techniques based on pollution prevention. In this case, we know a production-based emission standard is workable for tire cord production

because sources are already complying with the proposed emission standard and currently use mass balance methods to measure emissions.

#### 3. Puncture Sealant Application

For puncture sealant application, the format of the standards proposed is expressed as percent reduction associated with the operation of a capture system and control device. Only one U.S.-based puncture sealant application affected source has been identified. Information and data supplied by the one affected source indicate that the puncture sealant operation is conducted within a puncture sealant application booth, and that emissions from the total enclosure are vented to a carbon adsorption control device. As explained in section III.B, information from the affected source indicates that other pollution prevention techniques such as reformulation of the puncture sealant mixture do not appear achievable. Therefore, a percent reduction standard was selected to reflect the operation of the source.

#### *E. How Did We Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?*

We selected the compliance, monitoring, recordkeeping, and reporting requirements that would best demonstrate and document compliance with the proposed standards. The proposed procedures and methods have been used for similar sources and emission limit formats.

If you comply with the tire production emission limitation in option 1 by purchasing and using cements and solvents that comply with the limits, your recordkeeping and reporting are limited to using purchase records. You may also qualify for annual instead of semiannual compliance reports. You can choose this compliance alternative later even if you initially use one of the monthly averaging approaches to comply.

#### *F. What Is the Relationship of This Subpart to New Source Performance Standards (NSPS) for the Rubber Tire Manufacturing Industry?*

The NSPS (40 CFR part 60, subpart BBB) regulate the volatile organic emissions from new tire manufacturing sources constructed after January 20, 1983. For purposes of the NSPS, the term "tires" is defined as any agricultural, airplane, industrial, mobile home, light duty truck and/or passenger vehicle tire that has a bead diameter less than or equal to 0.5 meter (19.7 inches), a cross section dimension less than or

equal to 0.325 meter (12.8 inches), and that is mass produced in an assembly line. The proposed subpart XXXX would encompass these tires as well as any other tire manufacturing operation that falls within the affected source definition. This proposed subpart would only supercede the compliance requirements of the NSPS where the MACT is more stringent than the applicable NSPS.

The NSPS limit monthly volatile organic emissions for specific processes within the affected facility. In general terms, the VOC emissions for under-tread cementing, sidewall cementing, tread-end cementing, bead cementing, green tire spray and two specific Michelin® operations were established to limit the mass of VOC to the atmosphere on a process operation basis. To the extent the VOC emissions covered by the NSPS include volatile organic HAP, the proposed standards could be more restrictive than the NSPS. Tire manufacturing facilities will, therefore, need to consider the requirements of both today's proposed rule, once finalized, and the NSPS.

The NSPS compliance period (emission standard demonstration period) is a monthly time period. The proposed standard incorporates an emission cap as well as a mass of emission per tire, or average emission

per tire, during the month. For the NSPS, compliance is determined by adding up the usage of VOC and determining the total evaporated to the atmosphere and/or the average mass emission of VOC on a per tire basis for each affected process specified in the NSPS. The proposed NESHAP compliance period has been established to minimize the restructuring of the monitoring and recordkeeping requirements for the NSPS compliance determination period. Specifically, the proposed standard averaging period is a monthly average on a facilitywide basis.

The add-on control monitoring provisions of the NSPS and the proposed subpart are not inconsistent. Where the NSPS call for certain parameters to be monitored for control equipment, the NESHAP and the General Provisions to 40 CFR part 63 also call for the establishment of these parameters to the extent that add-on controls are used in the compliance plan for the affected source.

#### IV. Summary of Environmental, Energy, and Economic Impacts

##### A. What Are the Air Quality Impacts?

We estimate that the proposed rule would eliminate approximately 983 Mg/yr (1,084 tons/yr) (52 percent) of the baseline annual HAP emissions from this industry.

For the tire production source subcategory, we have estimated that the proposed standards would reduce HAP emissions by approximately 949 Mg/yr (1,047 tons/yr). For the tire cord production source subcategory, we have estimated that the proposed standards would reduce HAP emissions by approximately 34 Mg/yr (37 tons/yr). We have also estimated that the proposed standards for tire cord production would reduce emissions of VOC by the same amount.

For the one existing puncture sealant application source, we are not requiring different emissions control than what is currently done. Therefore, the proposed standards would not reduce HAP or other emissions from baseline emissions.

##### B. What Are the Cost Impacts?

Actual compliance costs will depend on each source's existing equipment and the modifications they make to comply with the proposed standards. Table 3 shows the total annual costs for affected sources to comply with the proposed standards. These costs include the estimated costs of reformulating cements, solvents, and coatings or installing of add-on control devices, as well as monitoring, reporting, and recordkeeping costs.

TABLE 3.—TOTAL COSTS OF THE RUBBER TIRE MANUFACTURING MACT FOR TIRE PRODUCTION, TIRE CORD PRODUCTION, AND PUNCTURE SEALANT APPLICATION

Cost	Tire production	Tire cord	Puncture sealant application <sup>a</sup>
Total nationwide control costs .....	\$21,359,000	\$2,477,000	\$0
Total annual monitoring costs .....	1,143,000	184,000	0
Annual average recordkeeping and reporting costs .....	579,000	102,000	0
Nationwide annual costs .....	23,081,000	2,763,000	0
Total nationwide costs .....	.....	.....	25,844,000

<sup>a</sup> Puncture sealant monitoring and reporting recordkeeping costs are included in the tire production costs.

##### C. What Are the Economic Impacts?

The economic impact analysis (EIA) provides an estimate of the anticipated regulatory impacts of the NESHAP for Rubber Tire Manufacturing. The information collected for this proposed rule from rubber tire manufacturers indicates that there are 14 manufacturers with 43 facilities that are potentially affected. States with the largest concentration of facilities are Alabama, Illinois, North Carolina, South Carolina and Ohio. None of the facilities manufacturing rubber tires are owned by companies that are classified as small businesses.

In general, the economic impacts of this proposed rule are expected to be

minimal. A market price increase of less than 1 percent, or \$0.03 per tire, is predicted. Domestic producer operating profits are projected to decrease by \$13.5 million. No rubber tire facility is expected to close as a result of this proposed rule. The EIA estimates that domestic tire output will decline by 144,000 tires (0.05 percent), while imports will increase by 22,000 tires (0.04 percent), resulting in a net decline of 122,000 tires, or 0.03 percent. For more information on the results of the EIA analysis, refer to the EIA in the docket.

##### D. What Are the Non-Air Health, Environmental, and Energy Impacts?

The standards proposed for the tire manufacturing and tire cord production source subcategories encourage the adoption of pollution prevention measures. As a result, we believe that most manufacturers will adopt these measures and expect minimal, if any, increases in energy consumption, and reductions in water pollution and solid waste.

The standards proposed for the puncture sealant application source subcategory do not impose any requirements above baseline, therefore, there would be no non-air health, environmental, and energy impacts

associated with the implementation of the proposed standards.

## V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at our final decisions and encourage comments on all aspects of this proposal from all interested parties.

## VI. Administrative Requirements

### A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is “significant” and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a “significant regulatory action” because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

### B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that the EPA determines is: (1) “Economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on

children and explain why the planned rule is preferable to other potentially effective and reasonable alternatives that we considered.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

### C. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today’s proposed rule is required by section 112(d) of the CAA and does not significantly or uniquely affect the communities of tribal governments. No tribal governments own or operate a rubber tire manufacturing facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### D. Executive Order 13132—Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of

regulatory policies that have federalism implications.” Policies that have federalism implications is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to rubber tire manufacturers and do not pre-exempt States from adopting more stringent standards. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this proposed rule, EPA did consult with State and local officials in developing this proposed rule. No concerns were raised by these officials during this consultation.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

### E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the

least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this proposed rule is not subject to the requirements of section 203 of the UMRA.

*F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has fewer than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. We have determined that none of the 43 facilities expected to be subject to the proposed rule are small entities, and that this proposed rule would not have a significant impact on a substantial number of small entities.

*G. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1982.01), and a copy may be obtained from Ms. Sandy Farmer by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at [farmer.sandy@epa.gov](mailto:farmer.sandy@epa.gov), or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The proposed information requirements are based on notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to total 12,766 labor hours per year at a total annual cost of \$680,927. This estimate includes notifications, a performance test and report for sources using control devices to comply with the regulation, semiannual compliance reports, annual compliance certifications, records of cements and solvents composition, records of cements and solvents use, records of HAP use, and records of any required parameter monitoring.

The total estimated annual and capital monitoring, inspection, reporting and recordkeeping (MIRR) costs for existing and new major sources to comply with the proposed standard when an affected source opts to comply via the use of add-on control equipment are determined based on the estimated capital costs of equipment required for MIRR activities. For the rubber tire manufacturing industry, the total estimated installed capital costs of this equipment is \$2,983,912 for existing major sources and \$569,558 for new major sources. Annualized capital MIRR costs for existing and new major sources to comply with the proposed standard through the use of add-on controls were estimated to be \$1,137,025 and \$189,853, respectively.

The total annual estimated operating and maintenance costs (O&M) were calculated based on (1) the estimated storage, filing, photocopying, and postage costs for the estimated total annual responses associated with the provisions of the rubber tire NESHAP and (2) the O&M costs for the equipment required for compliance with this standard. The total storage, filing, photocopying, and postage cost per response was \$19.99, for an annual estimated average of \$1,865.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200

Pennsylvania Avenue, NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Office for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after October 18, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by November 17, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### *H. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Publication L. No. 104-113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not

use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes in this rule to use EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 25, 25a, 204, 204a-f, 311. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No voluntary consensus standards were identified as applicable to this rule.

Five consensus standards: ASTM D4827-93, ASTM D4747-87, ASTM D1979-91, ASTM D3432-89 and ASTM PS9-94 are already incorporated by reference (IBR) in EPA Method 311. The search for emissions monitoring procedures identified 15 voluntary consensus standards. EPA determined that 11 of these 15 standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the proposed rule would not be practical due to lack of equivalency, detail, and/or quality assurance/quality control requirements. Therefore, we do not propose to use these voluntary consensus standards in this proposed rulemaking. These 11 standards are shown in Table X, along with the EPA review comments.

Four of the 15 remaining consensus standards identified are under development or under EPA review. Therefore, we do not propose to use these voluntary consensus standards in this proposed rulemaking. These four

standards are shown in Table Y, along with the EPA review comments.

For EPA Methods 1a, 2a, 2d, 2f, 2g, 204, and 204a-f, no applicable voluntary consensus standards were found at this time. The search and review results have been documented and are placed in the docket for this proposed rule.

EPA takes comment on proposed compliance demonstration requirements in this rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why this regulation should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR Part 63, Appendix A was used).

Section 63.5993 of the proposed standard list the EPA testing methods and performance standards included in the proposed regulations. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, the proposal also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing method or performance standards specified in this proposed rule.

TABLE X.—LIST OF VOLUNTARY CONSENSUS STANDARDS NOT APPLICABLE TO THE RUBBER TIRE MACT

Similar EPA standard reference method	Voluntary consensus standard	EPA'S comments on voluntary consensus standard
EPA Methods 1 and 2 .....	ISO 9096:1992 (in review 2000)—Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method.	Some portions of this standard relate to EPA Methods 1 and 2. There is no EPA method to compare this to. EPA cannot approve this standard without supporting data.
EPA Methods 1, 2, 2c, 3, 3b, 4.	ASTM D3154-91 (1995)—Standard Method for Average Velocity in a Duct (Pitot Tube Method).	Appears to cover EPA's Part 60 Methods 1, 2, 2c, 3, 3b, and 4 but lacks in quality control and quality assurance requirements.
EPA Method 2 .....	ASTM D3464-96—Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer.	There is no EPA method to compare this to. Applicability specifications are not clearly defined (example: range of gas composition, T limits). It appears to have the correct calibration procedures and specifications, but without supporting data. Some of the variability issues were not adequately addressed. EPA cannot call this equivalent to EPA Method 2 without supporting data.
EPA Method 2 .....	ISO 10780:1994—Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts.	This standard recommends the use of L-shaped pitots, although it contains procedures for the use of S-shaped pitots, as in EPA Method 2. ISO 10780 has good detail, but has significant deficiencies, <i>e.g.</i> , 1) the distance between each leg of the pitot to its face-opening plane can be up to 10 times the external tubing diameter vs. 1.5 times as specified in EPA Method 2; and 2) no direct calibration procedures are provided for an S-shaped pitot.



TABLE X.—LIST OF VOLUNTARY CONSENSUS STANDARDS NOT APPLICABLE TO THE RUBBER TIRE MACT—Continued

Similar EPA standard reference method	Voluntary consensus standard	EPA's comments on voluntary consensus standard
EPA Method 2 .....	ASTM D3796–90 (1998)—Standard Practice for Calibration of Type S Pitot Tubes.	This is a very good detailed procedure for calibrating Type S pitot tubes, but it is not a complete method alternative to EPA Method 2.
EPA Method 3a .....	ASTM D5835–95—Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration.	Similar to Methods 3a, 6c, 7e, 10, ALT 004, CTM 022. Lacks in detail and quality assurance/quality control requirements. Very similar to ISO 10396.
EPA Method 3a .....	CAN/CSA Z223.2–M86 (1986)—Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams.	Too general. This standard lacks in detail and quality assurance/quality control requirements. Appendices with valid quality control information are not a required part of this standard.
EPA Method 3a .....	ISO 10396:1993—Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations.	Similar to EPA Methods 3a, 6c, 7e, 10, ALT 004, CTM 022. Similar to ASTM D5835. Lacks in detail and quality assurance/quality control requirements.
EPA Method 4 .....	ASTM E337–84 (Reapproved 1996)—Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry- Bulb Temperatures).	This will only cover a small portion of what is acceptable for EPA Method 4.
EPA Method 25a .....	EN 12619 (1999)—Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method.	This standard is limited because it doesn't apply to solvent-using processes vapors or concentrations >40 ppm carbon. Specifications for probe temperature are only 20°C above flue gas as compared to EPA Method 25a which specifies greater than or equal to 110°C.
EPA Method 311 .....	ASTM D3271–87 (1993)—Standard Practice for Direct Injection of Solvent-Reducible Paints into a Gas Chromatograph for Solvent Analysis.	This standard is not an acceptable alternative to EPA Method 311. Section 1.2 under scope reads "This practice is not designed to be quantitative." The purpose of EPA Method 311 is to quantitatively measure HAP's in coatings.

TABLE Y.—LIST OF VOLUNTARY CONSENSUS STANDARDS NOT FINAL AND/OR UNDER EPA REVIEW FOR THE RUBBER TIRE MACT

Similar EPA standard reference method	Voluntary consensus standard	EPA's comments on voluntary consensus standard
EPA Method 2 .....	ASME/BSR MFC 12M—Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters.	Standard likely in development at the time the search was completed.
EPA Method 2 (possibly 1) .....	ASME/BSR MFC 13M—Flow Measurement by Velocity Traverse.	Under development when search was completed. Possibly similar to EPA Methods 1 and 2.
EPA Method 3a .....	ISO/DIS 12039—Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods.	Under development when search was completed. Possibly similar to EPA Method 3a and 10.
EPA Methods 25, 25a .....	ISO/FDIS 14965—Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method.	Under development when search was completed. Possible improvement of EPA Method 25a, but will not cover all aspects of EPA Method 25. EPA will review the standard when it is final.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements, Rubber tire manufacturing, Tire cord production.

Dated: September 15, 2000.

**Carol M. Browner,**  
*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

**PART 63—[AMENDED]**

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

2. Part 63 is amended by adding subpart XXXX to read as follows:

**Subpart XXXX—National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing**

Sec.

**What This Subpart Covers**

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63.5981 Am I subject to this subpart?

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**Emissions Limitations for Tire Production Affected Sources**

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**Emission Limitations for Tire Cord Production Affected Sources**

63.5986 What emission limitations must I meet for tire cord production affected sources?

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**Emission Limitations for Puncture Sealant Application Affected Sources**

- 63.5988 What emission limitations must I meet for puncture sealant application affected sources?
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- 63.6003 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for tire production affected sources?
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**Continuous Compliance Requirements for Tire Cord Production Affected Sources**

- 63.6005 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for tire cord production affected sources?
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**Continuous Compliance Requirements for Puncture Sealant Application Affected Sources**

- 63.6007 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?
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Table 12 to Subpart XXXX—Continuous Compliance with the Emission Limits for Tire Cord Production Affected Sources

Table 13 to Subpart XXXX—Minimum Data for Continuous Compliance with the Emission Limits for Puncture Sealant Application Affected Sources

Table 14 to Subpart XXXX—Continuous Compliance with the Emission Limits for Puncture Sealant Application Affected Sources

Table 15 to Subpart XXXX—Requirements for Reports

Table 16 to Subpart XXXX—Selected Hazardous Air Pollutants

Table 17 to Subpart XXXX—Applicability of General Provisions to Subpart XXXX

**Subpart XXXX—National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing****What This Subpart Covers****§ 63.5980 What is the purpose of this subpart?**

This subpart establishes national emission standards for hazardous air pollutants emitted from rubber tire manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

**§ 63.5981 Am I subject to this subpart?**

You are subject to this subpart if you own or operate a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions.

(a) Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires, the production of tire cord, and the application of puncture sealant. Components of rubber tires include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, tire cord and liners. Other components often associated with rubber tires but not integral to the tire such as wheels, inner tubes, and valve stems are not components of rubber tires or tire cord and are not subject to this subpart.

(b) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

**§ 63.5982 What parts of my facility does this subpart cover?**

(a) This subpart applies to each existing, new, or reconstructed affected source at facilities engaged in the manufacture of rubber tires or their components.

(b) The affected sources are defined in this section in paragraph (b)(1), tire production; paragraph (b)(2) of this section, tire cord production; paragraph (b)(3) of this section, puncture sealant application; and paragraph (b)(4) of this section, rubber processing.

(1) The tire production affected source is the collection of all processes that use cements and solvents as defined in § 63.6015, located at any rubber tire manufacturing facility. It includes, but is not limited to: storage and mixing vessels and the transfer equipment containing cements and/or solvents; wastewater handling and treatment operations; research and development operations; tread end cement operations; tire painting operations; ink and finish operations; undertread cement operations; general plant cleanup operations; bead cementing operations; tire building operations; green tire spray operations; extruding to the extent cements and solvents are used; cement house operations; marking operations; calendar operations to the extent solvents are used; tire stripping operations; tire repair operations; slab dip operations; other tire building operations to the extent that cements and solvents are used; and balance pad operations.

(2) The tire cord production affected source is the collection of all processes engaged in the production of tire cord. It includes, but is not limited to, dipping operations, drying ovens, heat-set ovens, bulk storage tanks, mixing facilities, general facility vents, air pollution control devices, and warehouse storage vents.

(3) The puncture sealant application affected source is the puncture sealant application booth operation used to apply puncture sealant to finished tires.

(4) The rubber processing affected source is the collection of all primary rubber mixing processes (e.g., banburys and associated drop mills) and mills that either mix compounds or warm rubber compound before the compound is processed into components of rubber tires. The mixed rubber compound itself is also included in the rubber processing affected source. There are no emission limitations or other requirements for the rubber processing affected source.

(c) An affected source is a new affected source if construction of the affected source commenced after October 18, 2000, and it met the

applicability criteria of § 63.5981 at the time construction commenced.

(d) An affected source is reconstructed if it meets the criteria as defined in § 63.2 of subpart A of this part.

(e) An affected source is existing if it is not new or reconstructed.

**§ 63.5983 When do I have to comply with this subpart?**

(a) If you have a new or reconstructed affected source, except as provided in § 63.5982(b)(4), you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before the effective date of this subpart, then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than the effective date of this subpart.

(2) If you start up your affected source after the effective date of this subpart, then you must comply with the emission limitations for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than 3 years after the effective date of this subpart.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the affected source(s) must be in compliance with existing source emission limitations no later than 3 years after the date on which the area source became a major source.

(d) You must meet the notification requirements in § 63.6009 according to the schedule in § 63.6009 and in subpart A of this part. Some of the notifications must be submitted before the date you are required to comply with the emission limitations in this subpart.

**Emission Limitations for Tire Production Affected Sources****§ 63.5984 What emission limitations must I meet for tire production affected sources?**

You must meet one of the two emission limitations in Table 1 of this subpart that applies to you.

**§ 63.5985 What are my alternatives for meeting the emission limitations for tire production affected sources?**

You must use one of the compliance alternatives in paragraphs (a) through (c) of this section to meet either of the emission limitations in § 63.5984.

(a) *Purchase alternative.* Use only cements and solvents that, as-purchased, contain no more HAP than

allowed by the emission limitations in Table 1, option 1 (HAP constituent option 1 only), of this subpart.

(b) *Monthly average alternative, without using an add-on control device.* Use cements and solvents such that the monthly average HAP emissions do not exceed the emission limitations in Table 1 of this subpart, option 1 or option 2.

(c) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the emission limitations in Table 1 of this subpart, option 1 or option 2.

**Emission Limitations for Tire Cord Production Affected Sources****§ 63.5986 What emission limitations must I meet for tire cord production affected sources?**

You must meet each emission limitation in Table 2 of this subpart that applies to you.

**§ 63.5987 What are my alternatives for meeting the emission limitations for tire cord production affected sources?**

You must use one of the compliance alternatives in paragraph (a) or (b) of this section to meet the emission limitations in § 63.5986.

(a) *Monthly average alternative, without using an add-on control device.* Use coatings such that the monthly average HAP emissions do not exceed the emission limitations in Table 2 of this subpart.

(b) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the emission limitations in Table 2 of this subpart.

**Emission Limitations for Puncture Sealant Application Affected Sources****§ 63.5988 What emission limitations must I meet for puncture sealant application affected sources?**

(a) You must meet each emission limitation in Table 3 of this subpart that applies to you.

(b) If you use an add-on control device to meet the emission limitations in Table 3 of this subpart, you must also meet each operating limit in Table 4 of this subpart that applies to you.

**§ 63.5989 What are my alternatives for meeting the emission limitations for puncture sealant application affected sources?**

You must use one of the compliance alternatives in paragraph (a) or (b) of this section to meet the emission limitations in § 63.5988.

(a) *Overall control efficiency alternative.* Use an emissions capture

system and control device and demonstrate that the application booth emissions meet the emission limitations in Table 3 of this subpart, and the control device and capture system meet the operating limits in Table 4 of this subpart.

(b) *Permanent total enclosure and control device efficiency alternative.* Use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51. Demonstrate that the control device reduces at least 86 percent of emissions for existing sources and 95 percent of emissions for new or reconstructed sources. You must also show that the control device and capture system meet the operating limits in Table 4 of this subpart.

#### General Compliance Requirements

##### **§ 63.5990 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the applicable emission limitations specified in Tables 1 through 3 of this subpart at all times, including periods of startup, shutdown, and malfunction.

(b) Except as provided in § 63.5982(b)(4), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) During the period between the compliance date specified for your source in § 63.5983 and the date upon which continuous compliance monitoring systems have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emission control equipment.

#### General Testing and Initial Compliance Requirements

##### **§ 63.5991 By what date must I conduct an initial compliance demonstration or performance test?**

(a) If you have a new or reconstructed affected source, you must conduct each required initial compliance demonstration or performance test within 180 calendar days after the compliance date that is specified for your new or reconstructed affected source in § 63.5983(a). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(b) If you have an existing affected source, you must conduct each required initial compliance demonstration or performance test no later than the compliance date that is specified for your existing affected source in

§ 63.5983(b). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(c) If you commenced construction or reconstruction between October 18, 2000, and the effective date of this subpart, you must demonstrate initial compliance with either the proposed emission limitations or the promulgated emission limitations no later than 180 calendar days after the effective date of this subpart or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

##### **§ 63.5992 When must I conduct subsequent performance tests?**

If you use a control system (add-on control device and capture system) to meet the emission limitations, you must also conduct a performance test at least once per year following your initial compliance demonstration to verify control system performance and reestablish operating parameters for control systems used to comply with the emissions limitations for tire production and tire cord production, and to verify control system performance and reestablish operating limits for control systems used to comply with the emissions limitations and operating limits for puncture sealant application.

##### **§ 63.5993 What performance tests and other procedures must I use?**

(a) If you use a control system to meet the emission limitations, you must conduct each performance test in Table 5 of this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions specified in Table 5 of this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(1), unless otherwise specified in the test method. Each test run must last at least 1 hour.

(e) If you are complying with the emission limitations using a control system, you must also conduct performance tests according to the requirements in paragraphs (e)(1) through (3) of this section as they apply to you.

(1) *Capture efficiency by permanent or temporary total enclosure.* Determine the capture efficiency (CE) of a capture system by using one of the procedures in Table 5 of this subpart.

(2) *Capture efficiency by an alternative method.* As an alternative to

constructing a permanent or temporary total enclosure, you may determine the capture efficiency using any capture efficiency protocol and test methods if the data satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach in appendix A to subpart KK of this part.

(3) *Efficiency of an add-on control device.* Use Table 5 of this subpart to select the test methods for determining the efficiency of an add-on control device.

#### Testing and Initial Compliance Requirements for Tire Production Affected Sources

##### **§ 63.5994 How do I conduct tests and procedures for tire production affected sources?**

(a) *Methods to determine the mass percent of each HAP in cements and solvents.* You must obtain the following information from the in-house collection of information or from manufacturers or suppliers, as appropriate. Use one of the methods specified in paragraph (a)(1) or (2) of this section.

(1) *Method 311 (appendix A of this part).* Use Method 311 to determine the mass percent organic HAP in cements and solvents.

(2) *Alternative test method.* Instead of using Method 311, you may use an alternative test method once we have approved it. See § 63.7(f) for the procedure you must follow to submit an alternative test method to us for approval.

(b) *Methods to demonstrate compliance with the HAP constituent emission limitations in Table 1 of this subpart (option 1).* Use the method in paragraph (b)(1) of this section to demonstrate initial and continuous compliance with the applicable emission limitations for tire production affected sources using the compliance alternative described in § 63.5985(a), purchase alternative. Use the equations in paragraphs (b)(2) through (4) of this section to demonstrate initial and continuous compliance with the emission limitations for tire production affected sources using the monthly average compliance alternatives described in § 63.5985(b) and (c).

(1) Determine the mass percent of each HAP in each cement and solvent according to the procedures in paragraph (a) of this section.

(2) Use Equation 1 of this section to calculate the daily HAP emission rate when complying by using cements and solvents without using an add-on control device such that the monthly average HAP emissions do not exceed

the HAP constituent emission limits in Table 1 of this subpart (option 1).

$$E_{\text{day}} = \frac{\left( \sum_{i=1}^n (\text{HAP}_i)(\text{TMASS}_i) \right) (10,000)}{\sum_{i=1}^n \text{TMASS}_i} \quad [\text{Eq. 1}]$$

Where:

$E_{\text{day}}$  = mass of the specific HAP emitted per total mass cements and solvents from all cements and solvents used in tire production in the day, grams per megagram.

$\text{HAP}_i$  = mass percent of the specific HAP, as-purchased, in cement and

solvent  $i$ , determined in accordance with paragraph (a) of this section.

$\text{TMASS}_i$  = total mass of cement and solvent  $i$  used in the day, grams.

$n$  = number of cements and solvents used in the day.

(3) Use Equation 2 of this section to calculate the daily HAP emission rate

when complying by using a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the HAP constituent emission limits in Table 1 of this subpart (option 1).

$$E_{\text{day}} = \frac{\left\{ \left( \sum_{i=1}^n (\text{HAP}_i)(\text{TMASS}_i) \right) + \left( \sum_{j=1}^m (\text{HAP}_j)(\text{TMASS}_j) \right) \left( 1 - \frac{\text{EFF}}{100} \right) + \sum_{k=1}^p (\text{HAP}_k)(\text{TMASS}_k) \right\} (10,000)}{\sum_{i=1}^n \text{TMASS}_i + \sum_{j=1}^m \text{TMASS}_j + \sum_{k=1}^p \text{TMASS}_k} \quad [\text{Eq. 2}]$$

Where:

$E_{\text{day}}$  = mass of the specific HAP emitted per total mass cements and solvents used in tire production in the day, grams per megagram.

$\text{HAP}_i$  = mass percent of the specific HAP in cement and solvent  $i$ , as purchased, determined in accordance with paragraph (a) of this section for cements and solvents used in the day in processes that are not routed to a control device.

$\text{TMASS}_i$  = total mass of cement and solvent  $i$  used in the day in processes that are not routed to a control device, gram.

$n$  = number of cements and solvents used in the day in processes that are not routed to a control device.

$\text{HAP}_j$  = mass percent of the specific HAP, in cement and solvent  $j$ , as-purchased, determined in accordance with paragraph (a) of this section, for cements and solvents used in the day in processes that are routed to a control device during one or more hourly periods when the control

system is operating within the operating range established during the performance test and when monitoring data are collected.

$\text{TMASS}_j$  = total mass of cement and solvent  $j$  used in the day in processes that are routed to a control device during all hourly periods when the control system is operating within the operating range established during the performance test and when monitoring data are collected, grams.

$\text{EFF}$  = efficiency of the control system (capture system efficiency x control device efficiency), percent.

$m$  = number of cements and solvents used in the day that are routed to a control device during hourly periods when the control device is operating within the operating range established during the performance test.

$\text{HAP}_k$  = mass percent of the specific HAP, as-purchased, in cement and solvent, as purchased, determined in accordance with paragraph (a) of this section, for cements and

solvents used during the day in processes that are routed to a control device during one or more hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$\text{TMASS}_k$  = total mass of cement or solvent  $k$  used in the day in processes that are routed to a control device during all hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected, grams.

$p$  = number of cements and solvents used in the day that are routed to a control device during hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

(4) Use Equation 3 of this section to calculate the monthly average.

$$E_{\text{avg}} = \frac{\sum_{i=1}^n (E_{\text{day}, i})(\text{TMASS}_{\text{day}, i})}{\sum_{i=1}^n \text{TMASS}_{\text{day}, i}} \quad [\text{Eq. 3}]$$

Where:

$E_{\text{avg}}$  = monthly average of the emission rate of the specific HAP, grams per megagram.

$E_{\text{day},i}$  = emission rate of the specific HAP for day  $i$ , grams per megagram.

$\text{TMASS}_{\text{day},i}$  = total mass of cements and solvents used in day  $i$ , megagrams.

$n$  = number of operating days in the month.

(c) *Methods to demonstrate compliance with the production-based emission limitation in Table 1 of this subpart (option 2).* Use the methods and equations in paragraphs (c)(1) through (5) of this section to demonstrate initial and continuous compliance with the production-based emission limitations for tire production affected sources using the compliance alternatives described in § 63.5985(b) and (c).

(1) *Methods to determine the mass percent of each HAP in cements and solvents.* Determine the mass percent of each HAP in cements and solvents using the applicable methods specified in paragraph (a) of this section.

(2) *Quantity of rubber processed into tires.* Determine your quantity of rubber processed into tires (megagrams) by accounting for the total mass of rubber that enters all processes subsequent to the mixing process.

(3) *Compliance without use of an add-on control device.* If you do not use an add-on control device to meet the emission limitations, use Equation 1 of this section to calculate grams of HAP emitted per megagram of rubber processed into tires, using the quantity of rubber processed into tires per day (megagrams),  $\text{RMASS}$ , as determined in paragraph (c)(2) of this section in place of the  $\text{TMASS}$  variables in the denominator.

(4) *Compliance with use of an add-on control device.* If you use a control device to meet the emission limitations, use Equation 2 of this section to calculate grams of HAP emitted per megagram of rubber processed into tires, using the quantity of rubber processed into tires per day (megagrams),  $\text{RMASS}$ , as determined in paragraph (c)(2) of this section in place of the  $\text{TMASS}$  variables in the denominator.

(5) *Monthly average calculation.* Use Equation 3 of this section to calculate the monthly average grams of emissions per megagram of rubber processed into tires, except substitute the quantity of rubber process per day (megagrams),  $\text{RMASS}$ , for the  $\text{TMASS}$  variable in the denominator.

(d) *Specific performance test requirements for tire production affected sources.*

(1) Conduct any required performance tests according to the requirements in § 63.5993.

(2) If you are demonstrating compliance with the HAP constituent option in Table 1 of this subpart (option 1), conduct the performance tests using cements and solvents that are representative of cements and solvents typically used at your tire production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 of this subpart.

(e) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equation 2 of this section for HAP emissions reduced using a control system (EFF), you must meet the requirements in paragraphs (e)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the natural draft openings (NDOs) in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDOs have not changed, that there are no new NDOs, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameters within the operating range established during the performance test.

(f) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the a ratio of their contribution to the uncontrolled emissions.

#### § 63.5995 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.5994(e)(1) to monitor, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(2) Determine the hourly average of all recorded readings.

(3) Determine the daily average of all recorded readings for each operating day.

(4) Determine the monthly average for each monthly period during the semiannual reporting period described in Table 15 of this subpart.

(5) You must record the results of each inspection, calibration, and validation check of the CPMS.

(b) For each temperature monitoring device, you must meet the requirements in paragraph (a) and in paragraphs (b)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a non-cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 degrees centigrade or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 degrees centigrade or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20 degrees Fahrenheit.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed near the process temperature sensor must yield a reading within 16.7 degrees centigrade of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each integrating regeneration stream flow monitoring device associated with a carbon adsorber, you must meet the requirements in paragraph (a) and in paragraphs (c)(1) and (2) of this section.

(1) Use a device that has an accuracy of  $\pm 10$  percent or better.

(2) Use a device that is capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle.

(d) For any other control device, or for other capture systems, ensure that the CPMS is operated according to a monitoring plan submitted to the Administrator with the compliance status report required by § 63.9(h). The monitoring plan must meet the requirements in paragraphs (a) and (d)(1) through (3) of this section. Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

(e) For each pressure differential monitoring device, you must meet the requirements in paragraph (a) and in paragraphs (e)(1) and (2) of this section.

(1) Conduct a quarterly Method 2 procedure on the applicable NDOs and

use the results to calibrate the pressure monitor if the difference in results are greater than 10 percent.

(2) Inspect the NDOs monthly to ensure that their size has not changed, that there are no new NDOs, and that no HAP sources have been moved closer to the NDOs than when the last performance test was conducted.

**§ 63.5996 How do I demonstrate initial compliance with the emission limitations for tire production affected sources?**

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 6 of this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

**Testing and Initial Compliance Requirements for Tire Cord Production Affected Sources**

**§ 63.5997 How do I conduct tests and procedures for tire cord production affected sources?**

(a) *Methods to determine the mass percent of each HAP in coatings.* You must obtain the following information from the in-house collection of information or from manufacturers or suppliers, as appropriate. Use the methods specified in paragraph (a)(1) or (2) of this section.

(1) *Method 311 (appendix A of the part).* Use Method 311 to determine the mass percent organic HAP in coatings.

(2) *Alternative test method.* Instead of using Method 311, you may use an alternative test method once we have

approved it. See § 63.7(f) for the procedure you must follow to submit an alternative method to us for approval.

(b) *Methods to determine compliance with the emission limitations in Table 2 of this subpart.* Use the following equations to demonstrate initial and continuous compliance with the emission limitations for tire cord production sources using the compliance alternatives described in § 63.5987(a) and (b).

(1) Use Equation 1 of this section to calculate the daily HAP emission rate when complying by using coatings without using an add-on control device such that the monthly average HAP emissions do not exceed the emission limits in Table 2 of this subpart.

$$E_{\text{day}} = \frac{\sum_{i=1}^n (\text{HAP}_i)(\text{TCOAT}_i)}{\text{TFAB}} \quad [\text{Eq. 1}]$$

Where:

$E_{\text{day}}$  = mass of the specific HAP emitted per total mass of fabric processed in the day, grams per megagram.

$\text{HAP}_i$  = mass percent of the specific HAP, as-purchased, in the coating  $i$ , determined in accordance with paragraph (a) of this section.

$\text{TCOAT}_i$  = total mass of coating  $i$  used in the day, grams.

$n$  = number of coatings used in the day.

TFAB = total mass of fabric processed in the day, megagrams.

(2) Use Equation 2 of this section to calculate the HAP emission rate when complying by using an add-on control device.

$$E_{\text{day}} = \frac{\left\{ \sum_{i=1}^n (\text{HAP}_i)(\text{TCOAT}_i) + \left( \sum_{j=1}^m (\text{HAP}_j)(\text{TCOAT}_j) \right) \left( 1 - \frac{\text{EFF}}{100} \right) + \sum_{k=1}^p (\text{HAP}_k)(\text{TCOAT}_k) \right\}}{\text{TFAB}} \quad [\text{Eq. 2}]$$

Where:

$E_{\text{day}}$  = mass of the specific HAP emitted per total mass of fabric processed in the day, grams per megagram.

$\text{HAP}_i$  = mass percent of the specific HAP in coating  $i$ , as-purchased, determined in accordance with paragraph (a) of this section, for coatings used in the day in processes that are not routed to a control device.

$\text{TCOAT}_i$  = total mass of coating  $i$  used in the day in processes that are not routed to a control device, grams.

$n$  = number of coatings used in the day in processes that are not routed to a control device.

$\text{HAP}_j$  = mass percent of the specific HAP in coating  $j$ , as-purchased, determined in accordance with paragraph (a) of this section, for coatings used in the day in processes that are routed to a control device during one or more hourly periods when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$\text{TCOAT}_j$  = total mass of coating  $j$  used in the day in processes that are routed to a control device during all hourly periods when the control system is operating within the operating range established during

the performance test and when monitoring data are not collected, grams.

EFF = efficiency of the control system (capture system efficiency \* control device efficiency), percent.

$m$  = number of coatings used in the day that are routed to a control device during hourly periods when the control device is operating within the operating range established during the performance test.

$\text{HAP}_k$  = mass percent of the specific HAP in coating  $k$ , as-purchased, determined in accordance with paragraph (a) of this section, for coatings used in the day in processes that are routed to a



control device during one or more hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TCOAT_k$  = total mass of coating  $k$  used in the day in processes that are routed to a control device during all hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are collected, grams.

$p$  = number of coatings used in the day that are routed to a control device during all hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TFAB$  = total mass of fabric processed in the day, megagrams.

(3) Use Equation 3 of this section to calculate the monthly average.

$$E_{avg} = \frac{\sum_{i=1}^n (E_{day,i}) (TFAB_{day,i})}{\sum_{i=1}^n TFAB_{day,i}} \quad [\text{Eq. 3}]$$

Where:

$E_{avg}$  = monthly average of the emission rate of the specific HAP, grams per megagram.

$E_{day,i}$  = emission rate of the specific HAP for day  $i$ , grams per megagram.

$TFAB_{day,i}$  = total mass of fabric processed during day  $i$ , megagrams.

$n$  = number of operating days in the month.

(c) *Specific performance test requirements for tire cord production affected sources.*

(1) Conduct any required performance tests according to the requirements in § 63.5993.

(2) Conduct the performance test using a coating from the list of coatings described in § 63.6011(c)(7), with average mass percent HAP that is representative of the coatings typically used at your tire cord production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 of this subpart.

(d) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equation 2 of this section for HAP emissions reduced using a control system (EFF), you must meet the requirements in paragraphs (d)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, monitor continuously the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the NDOs in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDOs have not changed, that there are no new NDOs, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameter within the operating range established during the performance test.

(e) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the a ratio of their contribution to the uncontrolled emissions.

#### **§ 63.5998 What are my monitoring installation, operation, and maintenance requirements?**

For each operating parameter that you are required by § 63.5997(d) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

#### **§ 63.5999 How do I demonstrate initial compliance with the emission limitations for tire cord production affected sources?**

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 7 of this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

#### **Testing and Initial Compliance Requirements for Puncture Sealant Application Affected Sources**

##### **§ 63.6000 How do I conduct tests and procedures for puncture sealant application affected sources?**

(a) Follow the test procedures described in § 63.5993 to determine the overall control efficiency of your system.

(b) You must also meet the requirements in paragraphs (b)(1) and (2) of this section.

(1) Conduct the performance test using a puncture sealant with an average mass percent HAP that is representative of the puncture sealants typically used at your puncture sealant application affected source.

(2) Establish all applicable operating limit ranges that correspond to the control system efficiency as described in Table 5 of this subpart.

(c) Use Equation 1 of this section to calculate the overall efficiency of the control system. If you have a permanent total enclosure that satisfies EPA Method 204 criteria, assume 100 percent capture efficiency for variable  $F$ .

$$R = \left( \frac{F}{100} \right) \left( 1 - \frac{E}{100} \right) \quad [\text{Eq. 1}]$$

Where:

$R$  = overall control system efficiency.

$F$  = capture efficiency of the capture system on add-on control device, percent.

$E$  = control efficiency of add-on control device  $k$ , percent.

(d) Monitor the established operating limits as appropriate.

(1) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(2) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(3) For each control device used other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(4) If you use a permanent total enclosure, monitor the face velocity across the NDOs in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDOs have not changed, that there are no new NDOs, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(5) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(e) Maintain the operating parameter within the operating range established during the performance test.

**§ 63.6001 What are my monitoring installation, operation, and maintenance requirements?**

(a) For each operating limit that you are required by § 63.6000(b)(2) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

**§ 63.6002 How do I demonstrate initial compliance with the emission limitations for puncture sealant application affected sources?**

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 8 of this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

**Continuous Compliance Requirements for Tire Production Affected Sources**

**§ 63.6003 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for tire production affected sources?**

(a) You must monitor and collect data as specified in Table 9 of this subpart.

(b) Except for periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) while the affected source is operating.

(c) In data average calculations and calculations used to report emission or operating levels, you may not use data recorded during periods of monitoring malfunctions or associated repairs, or recorded during required quality assurance or control activities. Nor may such data be used in fulfilling any applicable minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

**§ 63.6004 How do I demonstrate continuous compliance with the emission limitations for tire production affected sources?**

(a) You must demonstrate continuous compliance with each applicable limitation in Table 1 of this subpart

using the methods specified in Table 10 of this subpart.

(b) You must report each instance in which you did not meet an emission limitation in Table 1 of this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 10 of this subpart. These instances are deviations from the emission limitations in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

(c) You also must meet the following requirements if you are complying with the purchase alternative for tire production sources described in § 63.5984(a).

(1) If, after you submit the Notification of Compliance Status, you use a cement or solvent for which you have not previously verified percent HAP mass using the methods in § 63.5994(a), you must verify that each cement and solvent used in the affected source meets the emission limit, using any of the methods in § 63.5994(a).

(2) You must update the list of all the cements and solvents used at the affected source.

(3) With the compliance report for the reporting period during which you used the new cement or solvent, you must submit the updated list of all cements and solvents and a statement certifying that, as purchased, each cement and solvent used at the affected source during the reporting period met the emission limitations in Table 1 of this subpart.

**Continuous Compliance Requirements for Tire Cord Production Affected Sources**

**§ 63.6005 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for tire cord production affected sources?**

(a) You must monitor and collect data as specified in Table 11 of this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

**§ 63.6006 How do I demonstrate continuous compliance with the emission limitations for tire cord production affected sources?**

(a) You must demonstrate continuous compliance with each applicable emission limitation in Table 2 of this subpart using the methods specified in Table 12 of this subpart.

(b) You must report each instance in which you did not meet an applicable emission limitation in Table 2 of this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 12 of

this subpart. These instances are deviations from the emission limitations in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

**Continuous Compliance Requirements for Puncture Sealant Application Affected Sources**

**§ 63.6007 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?**

(a) You must monitor and collect data as specified in Table 13 of this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

**§ 63.6008 How do I demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?**

(a) You must demonstrate continuous compliance with each applicable emission limitation in Tables 3 and 4 of this subpart using the methods specified in Table 14 of this subpart.

(b) You must report each instance in which you did not meet an applicable emission limitation in Table 3 of this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 14 of this subpart. These instances are deviations from the emission limitations in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

**Notifications, Reports, and Records**

**§ 63.6009 What notifications must I submit and when?**

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4) and (6), and 63.9 (b) through (e) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before the effective date of this subpart, you must submit an Initial Notification not later than 120 calendar days after the effective date of this subpart.

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 5 through 8 of this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). The Notification must contain the information listed in Table 15 of this subpart for compliance reports.

(1) For each initial compliance demonstration required in Table 6 or 7 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 6 through 8 of this subpart that includes a performance test conducted according to the requirements in Table 5 of this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(f) For each tire production affected source, the Notification of Compliance Status must also identify the emission limitation option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(g) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), the Notification of Compliance Status must also include the information listed in paragraphs (g)(1) and (2) of this section.

(1) A list of each cement and solvent, as-purchased, that is used at the affected source and the manufacturer or supplier of each.

(2) The individual HAP content (percent by mass) of each cement and solvent as applied that is used.

(h) For each tire production or tire cord production affected source using a control device, the Notification of Compliance Status must also include the information in paragraphs (h)(1) and (2) of this section for each operating parameter in §§ 63.5994(e)(1) and 63.5997(d)(1) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (for example, average secondary chamber firebox temperature over the period of the performance test was 1,500 degrees Fahrenheit).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission

limitations in Tables 1 and 2 of this subpart.

(i) For each puncture sealant application affected source, the Notification of Compliance Status must include the information listed in paragraphs (i)(1) and (2) of this section.

(1) For each applicable operating parameter in Table 4 of this subpart, the operating parameter value averaged over the full period of the performance test.

(2) For each applicable operating parameter in Table 4 of this subpart, the operating parameter range within which HAP emissions do not exceed the levels in Table 3 of this subpart.

#### **§ 63.6010 What reports must I submit and when?**

(a) You must submit each applicable report in Table 15 of this subpart.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 15 of this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5983 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5983.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting subparts pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of

according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain information specified in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations (emission limit or operating limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period.

(5) If there were no periods during which the operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the operating parameter monitoring systems or CPMS were out-of-control during the reporting period.

(6) For each tire production affected source, the emission limitation option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(7) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), for each annual reporting period during which you use a cement and solvent that, as-purchased, was not included in the list submitted with the Notification of Compliance Status in § 63.6009(e)(1), an updated list of all cements and solvents used, as-purchased, at the affected source. You must also include a statement certifying that each cement and solvent, as-purchased, that was used at the affected source during the reporting period, met the HAP constituent limits (option 1) in Table 1 of this subpart.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (3) of this section and the information specified in paragraphs (d)(1) and (2) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 10 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) Upon notification to the Administrator that a tire production affected source has eliminated or reformulated cement and solvent such that the source can demonstrate compliance using the purchase alternative in § 63.5985(a), future compliance reports for this affected source may be submitted annually as specified in paragraph § 63.6010(c)(7).

#### **§ 63.6011 What records must I keep?**

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) For each tire production affected source, you must keep the records specified in Table 9 of this subpart to show continuous compliance with each emission limitation that applies to you.

(c) For each tire cord production affected source, you must keep the records specified in Table 11 of this subpart to show continuous compliance with each emission limitation that applies to you.

(d) For each puncture sealant application affected source, you must keep the records specified in Table 13 of this subpart to show continuous

compliance with each emission limitation that applies to you.

#### **§ 63.6012 In what form and how long must I keep my records?**

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

#### **Other Requirements and Information**

#### **§ 63.6013 What parts of the General Provisions apply to me?**

Table 17 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

#### **§ 63.6014 Who implements and enforces this subpart?**

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the emissions standards in §§ 63.5984, 63.5986, and 63.5988 under 63.6(g).

(2) Approval of major alternatives to test methods under §§ 63.7(e)(2)(ii) and 63.7(f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

#### **§ 63.6015 What definitions apply to this subpart?**

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions, and in this section.

*As-purchased* means the condition of a cement and solvent as delivered to the user, prior to any mixing, blending, or dilution.

*Capture system* means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that conveys these emissions to a control device.

*Cements and solvents* means the collection of all organic chemicals, mixtures of chemicals, and compounds used in the production of rubber tires, including cements, solvents, and mixtures thereof as process aides in storage tanks, wastewater, and research and development areas. Cements and solvents include, but are not limited to, tread end cements, undertread cements, bead cements, tire building cements and solvents, green tire spray, blemish repair paints, side wall protective paints, marking inks, general cleaning solvents, and slab dip mixtures. Cements and solvents do not include coatings used in tire cord production, puncture sealant application, or chemicals and compounds that are not used in the tire production process such as restroom cleaning compounds, office supplies (e.g., dry-erase markers, correction fluid), architectural paint, or any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution to and use by the general public.

*Coating* means a compound or mixture of compounds that is applied to a fabric substrate in the tire cord production operation that allows the fabric to be prepared (e.g., by heating, setting, curing) for incorporation into a rubber tire.

*Components of rubber tires* means any piece or part used in the manufacture of rubber tires that becomes an integral portion of the rubber tire when manufacture is complete and includes rubber compounds, sidewalls, tread, tire beads, and liners. Other components often associated with rubber tires such as wheels, valve stems, and inner tubes are not considered components of rubber tires for the purposes of these standards. Tire cord and puncture sealant, although components of rubber tires, are considered as separate affected sources in these standards and are defined separately.

*Control device* means a combustion device, recovery device, recapture device, or any combination of these devices used for recovering or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers,

condensers, incinerators (oxidizers), flares, boilers, and process heaters.

*Control system efficiency* means the product of the organic HAP emissions recovered or destroyed by a control device (in percent) and the total organic HAP emissions that are captured and conveyed to the control device (as a percent).

*Deviation* means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Emission limitation* means any emission limit, opacity limit, operating limit, or visible emission limit.

*Mixed rubber compound* means the material, commonly referred to as rubber, from which rubber tires and components of rubber tires are manufactured. For the purposes of this definition, mixed rubber compound refers to the compound that leaves the primary rubber mixing process (for example, banburys) and is then processed into components from which rubber tires are manufactured.

*Operating day* means the period defined in the Notification of Compliance Status. It may be from midnight to midnight or a portion of a 24-hour period.

*Monthly operating period* means the period in the Notification of Compliance Status comprised of the number of operating days in the month.

*Primary rubber mixing* means the physical process of combining components to make mixed rubber compound. Internal process mixing may occur at a facility that produces rubber tires or components of rubber tires or at a stand-alone facility that then transfers the mixed rubber compound to a facility that produces rubber tires or components of rubber tires.

*Puncture sealant* means a mixture that may include solvent constituents, rubber, and process oil that is applied to the inner liner of a finished tire for

the purpose of sealing any future hole which might occur in the tread when an object penetrates the tire.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Rubber* means the compound of components (for example, natural rubber, synthetic rubber, carbon black, oils, sulfur) that are combined in specific formulations for the sole purpose of making rubber tires or components of rubber tires.

*Rubber processed* means the amount in pounds of rubber delivered to the tire component and tire processing operations in a tire manufacturing facility (e.g., warm-up mills, extruders, calendars, or other tire component and tire manufacturing equipment).

*Rubber tire* means a continuous solid or pneumatic cushion typically encircling a wheel and usually consisting, when pneumatic, of an external rubber covering.

*Tire cord* means any fabric (for example, polyester, cotton, steel) that is treated with a coating mixture that allows the fabric to more readily accept impregnation with rubber to become an integral part of a rubber tire.

#### Tables to Subpart XXXX of Part 63

TABLE 1 TO SUBPART XXXX—EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

Option*	Emission limitation
Option 1—HAP Constituent Option .....	1. Emissions of each HAP in Table 16 of this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total cements and solvents used at the tire production affected source, and 2. Emissions of each HAP not in Table 16 of this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total cements and solvents used at the tire production affected source.
Option 2—Production-based Option .....	Emissions of HAP must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires at the tire production affected source.

\* For each new, reconstructed, or existing tire production affected source, you must meet either the emission limitations in option 1 or the emission limitation in option 2.

You must comply with the emission limitations for tire cord production affected sources in the following table:

TABLE 2 TO SUBPART XXXX—EMISSION LIMITATIONS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For each. . .	You must meet the following emission limitations
1. Existing tire cord production affected source .....	Emissions must not exceed 280 grams HAP per megagram (0.56 pounds per ton) of fabric processed at the tire cord production affected source.
2. New or reconstructed tire cord production affected source .....	Emissions must not exceed 220 grams HAP per megagram (0.43 pounds per ton) of fabric processed at the tire cord production affected source.

You must comply with the emission limitations for puncture sealant application affected sources in the following table:

TABLE 3 TO SUBPART XXXX—EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For each. . .	You must meet the following emission limitation
1. Existing puncture sealant application spray booth .....	Reduce spray booth emissions by at least 86 percent by weight.
2. New or reconstructed puncture sealant application spray booth .....	Reduce spray booth emissions by at least 95 percent by weight.

You must comply with the operating limits for puncture sealant application affected sources in the following table:

TABLE 4 TO SUBPART XXXX—OPERATING LIMITS FOR PUNCTURE SEALANT APPLICATION CONTROL DEVICES

For each. . .	You must. . .
1. Thermal oxidizer to which puncture sealant application spray booth emissions are ducted.	Maintain the daily average firebox secondary chamber temperature within the operating range established during the performance test.
2. Carbon adsorber (regenerative) to which puncture sealant application spray booth emissions are ducted.	a. Maintain the total regeneration mass, volumetric flow, and carbon bed temperature at the operating range established during the performance test. b. Reestablish the carbon bed temperature to the levels established during the performance test within 15 minutes of each cooling cycle.
3. Other type of control device to which puncture sealant application spray booth emissions are ducted.	Maintain your operating parameter(s) within the range(s) established during the performance test.
4. Permanent total enclosure capture system .....	a. Maintain the face velocity across any natural draft openings (NDOs) at least at the levels established during the performance test. b. Maintain the size of NDOs, the number of NDOs, and their proximity to HAP emission sources consistent with the parameters established during the performance test.
5. Other capture system .....	Maintain the operating parameters identified in the monitoring plan and established during the performance test.

You must comply with the requirements for performance tests for existing, new, or reconstructed affected sources in the following table:

TABLE 5 TO SUBPART XXXX.—REQUIREMENTS FOR PERFORMANCE TESTS FOR EXISTING, NEW, OR RECONSTRUCTED AFFECTED SOURCES

If you are using . . .	You must . . .	Using . . .	According to the following requirements . . .
1. A thermal oxidizer	Measure total HAP emissions, determine destruction efficiency of the control device, and establish a site-specific firebox secondary chamber temperature limit at which the emission limit that applies to the affected source is achieved.	Method 25 or 25A performance test and data from the temperature monitoring system.	a. Measure total HAP emissions and determine the destruction efficiency of the control device using Method 25. You may use method 25A, if (i) an exhaust gas volatile organic matter concentration of 50 parts per million (ppmv) or less is required to comply with the standard, (ii) the volatile organic matter concentration at the inlet to the control system and the required level of control are such to result in exhaust volatile organic matter concentration of 50 ppmv or less, or (iii) because of the high efficiency of the control device exhaust is 50 ppmv or less, regardless of the inlet concentration. b. Collect firebox secondary chamber temperature data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average firebox temperature over the 3-hour performance test by computing the average of all of the 15-minute readings.

TABLE 5 TO SUBPART XXXX.—REQUIREMENTS FOR PERFORMANCE TESTS FOR EXISTING, NEW, OR RECONSTRUCTED AFFECTED SOURCES—Continued

If you are using . . .	You must . . .	Using . . .	According to the following requirements . . .
2. A carbon adsorber (regenerative).	Measure total organic HAP emissions, establish the total regeneration mass or volumetric flow, and establish the temperature of the carbon bed within 15 minutes of completing any cooling cycles. The total regeneration mass, volumetric flow, and carbon bed temperature must be those at which the emission limit that applies to the affected source is achieved.	Method 25 or Method 25A performance test and data from the carbon bed temperature monitoring device.	<p>a. Measure total HAP emissions using Method 25. You may use Method 25A, if (i) an exhaust gas volatile organic matter concentration of 50 parts per million (ppmv) or less is required to comply with the standard, (ii) the volatile organic matter concentration at the inlet to the control system and the required level of control are such to result in exhaust volatile organic matter concentrations of 50 ppmv or less, or (iii) because of the high efficiency of the control device exhaust is 50 ppmv or less, regardless of the inlet concentration.</p> <p>b. Collect carbon bed total regeneration mass or volumetric flow for each carbon bed regeneration cycle during the performance test.</p> <p>c. Record the maximum carbon bed temperature data for each carbon bed regeneration cycle during the performance test.</p> <p>d. Record the carbon bed temperature within 15 minutes of each cooling cycle during the performance test.</p> <p>e. Determine the average total regeneration mass or the volumetric flow over the 3-hour performance test by computing the average of all of the readings.</p> <p>f. Determine the average maximum carbon bed temperature over the 3-hour performance test by computing the average of all of the readings.</p> <p>g. Determine the average carbon bed temperature within 15 minutes of the cooling cycle over the 3-hour performance test by computing the average of all of the readings.</p>
3. Any control device other than a thermal oxidizer or carbon adsorber.	Determine control device efficiency and establish operating parameter limits with which you will demonstrate continuous compliance with the emission limit that applies to the affect source.	EPA-approved methods and data from the continuous parameter monitoring system.	Conduct the performance test according to the site-specific plan submitted according to § 63.7(c)(2)(i).
4. All control devices	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR 60, appendix A.	Locate sampling sites at the inlet and outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate. c. Conduct gas analysis .....	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR 60, appendix A. Method 3, 3A, or 3B of 40 CFR 60, appendix A.	
	d. Measure Method 4 of moisture 40 CFR 60, appendix A.		
5. A permanent total enclosure (PTE).	Measure the face velocity across natural draft openings and document the design features of the enclosure.	Method 204, CFR part 51, Appendix M	Capture efficiency is assumed to be 100 percent if the criteria are met.
6. Temporary total enclosure (TTE).	Construct a temporarily installed enclosure that allows you to determine the efficiency of your capture system and establish operating parameter limits.	Method 204 and the appropriate combination of Methods 204A–204F, 40 CFR part 51, Appendix M.	



You must show initial compliance with the emission limitations for tire production affected sources according to the following table:

TABLE 6 TO SUBPART XXXX.—INITIAL COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the purchase compliance alternative in § 63.5985(a).	The HAP constituent option in Table 1 of this subpart (option 1).	You demonstrate for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 of this subpart, option 1, determined according to the procedures in § 63.5994(a) and (b)(1).
2. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b).	The HAP constituent option in Table 1 of this subpart (option 1).	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(2) and (4).
3. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c).	The HAP constituent option in Table 1 of this subpart (option 1).	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(3) and (4), (d) and (e).
4. Sources complying with the monthly average compliance alternative without use of a control device in § 63.5985(b).	The production-based option in Table 1 of this subpart (option 2).	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) through (3) and (5).
5. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c).	The production-based option in Table 1 of this subpart (option 2).	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) and (2) through (5), (d), and (e).

You must show initial compliance with the emission limitations for tire cord production affected sources according to the following table:

TABLE 7 TO SUBPART XXXX.—INITIAL COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5987(a).	In Table 2 of this subpart .....	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 of this subpart, determined according to the procedures in § 63.5997(a), (b)(1) and (3).
2. Sources complying with the monthly average alternative using an add-on control device according to § 63.5987(b).	In Table 2 of this subpart .....	You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 of this subpart, determined according to the procedures in § 63.5997(a), (b)(2) and (3), (c) and (d).

You must show initial compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 8 TO SUBPART XXXX.—INITIAL COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Sources complying with the overall control efficiency alternative in § 63.5989(a).	In Table 3 of this subpart .....	You demonstrate that you conducted the performance tests required by § 63.6000, determined the overall efficiency of your control system, demonstrated that the applicable limits have been achieved, and established the operating limits for your equipment.
2. Sources complying with the permanent total enclosure and control device efficiency alternative in § 63.5989(b).	In Table 3 of this subpart .....	You demonstrate that you conducted the performance tests required by § 63.6000, determined the individual efficiencies of your capture and control systems, demonstrated that the applicable limits have been achieved, and established the operating limits for your equipment.

You must maintain minimum data to show continuous compliance with the emission limitations for tire production affected sources according to the following table:

TABLE 9 TO SUBPART XXXX—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with purchase compliance alternative in § 63.5985(a) that are meeting the HAP constituent emission limitation (option 1) in Table 1 of this subpart.	a. A list of each cement and solvent as-purchased and the manufacturer or supplier of each. b. A record of Method 311, or approved alternative method, test results indicating the mass percent of each HAP for each compliance cement and solvent as-purchased.
2. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b) that are meeting emission limitations in Table 1 of this subpart.	a. A record of the Method 311, or approved alternative method, test results, indicating the mass percent of each HAP for each cement and solvent, as-purchased. b. The mass of each cement and solvent used each operating day. c. The total mass of rubber processed into tires each operating day (if complying with the production-based emission limitation, option 2, in Table 1 of this subpart). d. All data and calculations used to determine the monthly average mass percent for each HAP for each operating month. e. Monthly averages of emissions in the appropriate emission limitation format.
3. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c) that are meeting emission limitations in Table 1 of this subpart.	The same information as sources complying with the monthly average alternative that are not using a control device, except add records of operating parameter values for each monthly operating parameter that applies to you.

You must show continuous compliance with the emission limitations for tire production affected sources according to the following table:

TABLE 10 TO SUBPART XXXX. —CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
1. Sources complying with purchase compliance alternative in § 63.5985(a).	The HAP constituent option in Table 1 of this subpart (option 1).	Demonstrating for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 of this subpart, option 1, determined according to the procedures in § 63.5994(a) and (b)(1).

TABLE 10 TO SUBPART XXXX. —CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limitation . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b).	The HAP constituent option in Table 1 of this subpart (option 1).	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(2) and (4).
3. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c).	The HAP constituent option in Table 1 of this subpart (option 1).	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(3) and (4), (d) and (e).
4. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b).	The production-based option in Table 1 of this subpart (option 2).	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) through (3) and (5).
5. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c).	The production-based option in Table 1 of this subpart (option 2).	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) and (2) through (5), (d), and (e).

You must maintain minimum data to show continuous compliance with the emission limitations for tire cord production affected sources according to the following table:

TABLE 11 TO SUBPART XXXX. —MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5987(a) that are meeting emission limitations in Table 2 of this subpart.	a. A record of the Method 311, or approved alternative method, test results, indicating the mass percent of each HAP for coating used. b. The mass of each coating used each operating day. c. The total mass of fabric processed each operating day. d. All data and calculations used to determine the monthly average mass percent for each HAP for each operating month. e. Monthly averages of emissions in the appropriate emission limitation format.
2. Sources complying with the monthly average alternative using an add-on control device according to § 63.5987(b) that are meeting emission limitations in Table 2 of this subpart.	The same information as sources complying with the monthly average alternative that are not using a control device, except add records of operating parameter values for each operating parameter that applies to you.

You must show continuous compliance with the emission limitations for tire cord production affected sources according to the following table:

TABLE 12 TO SUBPART XXXX. —CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Sources complying with the monthly average compliance alternative without use of a control device in § 63.5987(a).	In Table 2 of this subpart .....	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 of this subpart, determined according to the applicable procedures in § 63.5997(a), (b)(1) and (3).

TABLE 12 TO SUBPART XXXX.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
2. Sources complying with the monthly average compliance alternative using a control device in § 63.5987(b).	In Table 2 of this subpart .....	Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5997(a), (b)(2) and (3), (c), and (d).

You must maintain minimum data to show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 13 TO SUBPART XXXX.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For . . .	You must maintain . . .
1. Each thermal oxidizer used to reduce HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart.	Records of the secondary chamber firebox temperature for 100 percent of the hours during which the process was operated.
2. Each carbon adsorber used to reduce HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart.	Records of the total regeneration stream mass or volumetric flow for each regeneration cycle for 100 percent of the hours during which the process was operated, and a record of the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle for 100 percent of the hours during which the process was operated.
3. Other type of control device to which puncture sealant application spray booth HAP emissions are ducted so that they do not exceed the operating limits in Table 4 of this subpart.	Records of operating parameter values for each operating parameter that applies to you.
4. Permanent total enclosure capture system used to capture HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart.	Records of the face velocity across any natural draft openings (NDOs), the size of NDOs, the number of NDOs, and their proximity to HAP emission sources.
5. Other capture system used to capture HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart.	Records of operating parameter values for each operating parameter that applies to you.

You must show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 14 TO SUBPART XXXX.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

For . . .	You must demonstrate continuous compliance by . . .
1. Each carbon adsorber used to comply with the emission limits in Table 3 of this subpart.	a. Monitoring and recording every 15 minutes the total regeneration stream mass OR volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle, and b. Maintaining the total regeneration stream mass OR the volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle within the operating levels established during your performance test.
2. Each thermal oxidizer used to comply with the emission limits in Table 3 of this subpart.	a. Continuously monitoring and recording the firebox temperature every 15 minutes, and b. Maintaining the daily average firebox temperature within the operating level established during your performance test.
3. Other “add-on” control or capture system hardware used to comply with the emission limits in Table 3 of this subpart.	Continuously monitoring and recording specified parameters identified through compliance testing and identified in the Notification of Compliance Status.

You must submit a compliance report semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(c)(7). The report must also include the information in § 63.6010(c)(1) through (8). The report must include the following:

TABLE 15 TO SUBPART XXXX.—REQUIREMENTS FOR REPORTS

If . . .	Then you must submit a report or statement that:
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from the emission limitations during the reporting period.
2. There were no periods during which the operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7).	There were no periods during the which the CPMS were out- of-control during the reporting period.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in § 63.6010(c).
4. There were periods during which the operating parameter monitoring systems were out-of-control, as specified in § 63.8(c)(7).	Contains the information in § 63.6010(e).

You must use the information listed in the following table to determine which emission limitation in Table 1 of this subpart is applicable to you if own or operate a tire production affected source:

TABLE 16 TO SUBPART XXXX.—SELECTED HAZARDOUS AIR POLLUTANTS

CAS No.	Selected hazardous air pollutants
50000 .....	Formaldehyde.
51796 .....	Ethyl carbamate (Urethane).
53963 .....	2-Acetylaminofluorene.
56235 .....	Carbon tetrachloride.
57147 .....	1,1-Dimethyl hydrazine.
57578 .....	beta-Propiolactone.
58899 .....	Lindane (all isomers).
59892 .....	N-Nitrosomorpholine.
60117 .....	Dimethyl aminoazobenzene.
62759 .....	N-Nitrosodimethylamine.
64675 .....	Diethyl sulfate.
67663 .....	Chloroform.
67721 .....	Hexachloroethane.
71432 .....	Benzene (including benzene from gasoline).
75014 .....	Vinyl chloride.
75070 .....	Acetaldehyde.
75092 .....	Methylene chloride (Dichloromethane).
75218 .....	Ethylene oxide.
75558 .....	1,2-Propylenimine (2-Methyl aziridine).
75569 .....	Propylene oxide.
77781 .....	Dimethyl sulfate.
79061 .....	Acrylamide.
79447 .....	Dimethyl carbamoyl chloride.
79469 .....	2-Nitropropane.
88062 .....	2,4,6-Trichlorophenol.
91941 .....	3,3-Dichlorobenzidine.
92671 .....	4-Aminobiphenyl.
92875 .....	Benzidine.
95534 .....	o-Toluidine.
95807 .....	2,4-Toluene diamine.
96128 .....	1,2-Dibromo-3-chloropropane.
96457 .....	Ethylene thiourea.
98077 .....	Benzotrichloride.
101144 .....	4,4-Methylene bis(2-chloroaniline).
101779 .....	4,4-Methylenedianiline.
106467 .....	1,4-Dichlorobenzene(p).
106898 .....	Epichlorohydrin (1-Chloro-2,3-epoxypropane).
106934 .....	Ethylene dibromide (Dibromoethane).
106990 .....	1,3-Butadiene.
107062 .....	Ethylene dichloride (1,2-Dichloroethane).
107131 .....	Acrylonitrile.
107302 .....	Chloromethyl methyl ether.
117817 .....	Bis(2-ethylhexyl)phthalate (DEHP).
118741 .....	Hexachlorobenzene.
119904 .....	3,3-Dimethoxybenzidine.
119937 .....	3,3-Dimethyl benzidine.
122667 .....	1,2-Diphenylhydrazine.
123911 .....	1,4-Dioxane (1,4-Diethyleneoxide).
127184 .....	Tetrachloroethylene (Perchloroethylene).
140885 .....	Ethyl acrylate.
302012 .....	Hydrazine.
542756 .....	1,3-Dichloropropene.
542881 .....	Bis(chloromethyl)ether.

TABLE 16 TO SUBPART XXXX.—SELECTED HAZARDOUS AIR POLLUTANTS—Continued

CAS No.	Selected hazardous air pollutants
680319 .....	Hexamethylphosphoramide.
684935 .....	N-Nitroso-N-methylurea.
1120714 .....	1,3-Propane sultone.
1332214 .....	Asbestos.
1336363 .....	Polychlorinated biphenyls (Aroclors).
1746016 .....	2,3,7,8-Tetrachlorodibenzo-p-dioxin.
8001352 .....	Toxaphene (chlorinated camphene).
	Arsenic Compounds.
	Chromium Compounds.
	Coke Oven Emissions.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.1 .....	Applicability .....	Initial applicability determination, applicability after standard established, permit requirements, extensions, notifications.	Yes .....	Yes.
§ 63.2 .....	Definitions .....	Definitions for part 63 standards .....	Yes .....	Yes.
§ 63.3 .....	Units and Abbreviations .....	Units and abbreviations for part 63 standards .....	Yes .....	Yes.
§ 63.4 .....	Prohibited Activities .....	Prohibited activities, compliance date, circumvention, severability.	Yes .....	Yes.
§ 63.5 .....	Construction/ Reconstruction .....	Applicability; applications; approvals .....	Yes .....	Yes.
§ 63.6(a) .....	Applicability .....	GP apply unless compliance extension; GP apply to area sources that become major.	Yes .....	Yes.
§ 63.6(b)(1)–(4) .....	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes .....	Yes.
§ 63.6(b)(5) .....	Notification .....	Must notify if commenced construction or reconstruction after proposal.	Yes .....	Yes.
§ 63.6(b)(6) .....	[Reserved] .....	.....	Yes .....	Yes.
§ 63.6(b)(7) .....	Compliance Dates for New and Reconstructed Area Sources that Become Major.	.....	No .....	No.
§ 63.6(c)(1)–(2) .....	Compliance Dates for Existing Sources.	1. Comply according to date in subpart, which must be no later than 3 years after effective date.	Yes .....	Yes.
		2. For section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes .....	Yes.
§ 63.6(c)(3)–(4) .....	[Reserved] .....	.....	Yes .....	Yes.
§ 63.6(c)(5) .....	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes .....	Yes.
§ 63.6(d) .....	[Reserved] .....	.....	Yes .....	Yes.
§ 63.6(e)(1)–(2) .....	Operation & Maintenance .....	1. Operate to minimize emissions at all times .....	Yes .....	Yes.
		2. Correct malfunctions as soon as practicable .....	Yes .....	Yes.
		3. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes .....	Yes.

TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.6(e)(3) .....	Startup, Shutdown, and Malfunction Plan (SSMP).	.....	No .....	No.
§ 63.6(f)(1) .....	Compliance Except During SSM ....	.....	No .....	No.
§ 63.6(f)(2)–(3) .....	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes .....	Yes.
§ 63.6(g)(1)–(3) .....	Alternative Standard .....	Procedures for getting an alternative standard .....	Yes .....	Yes.
§ 63.6(h) .....	Opacity/Visible Emission (VE) Standards.	.....	No .....	No.
§ 63.6(i) .....	Compliance Extension .....	Procedures and criteria for Administrator to grant compliance extension.	Yes .....	Yes.
§ 63.6(j) .....	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes .....	Yes.
§ 63.7(a)(1)–(2) .....	Performance Test Dates .....	.....	No .....	No.
§ 63.7(a)(3) .....	Section 114 Authority .....	Administrator may require a performance test under CAA section 114 at any time.	Yes .....	No.
§ 63.7(b)(1) .....	Notification of Performance Test ....	Must notify Administrator 60 days before the test .....	Yes .....	No.
§ 63.7(b)(2) .....	Notification of Rescheduling .....	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes .....	No.
§ 63.7(c) .....	Quality Assurance/Test Plan .....	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: 1. Test plan approval procedures .....	Yes .....	No.
		2. Performance audit requirements .....	Yes .....	No.
		3. Internal and External quality assurance procedures for testing.	Yes .....	No.
§ 63.7(d) .....	Testing Facilities .....	Requirements for testing facilities .....	Yes .....	No.
§ 63.7(e)(1) .....	Conditions for Conducting Performance Tests.	1. Performance tests must be conducted under representative conditions.	Yes .....	No.
		2. Cannot conduct performance tests during SSM .....	Yes .....	No.
		3. Not a violation to exceed standard during SSM .....	Yes .....	No.
§ 63.7(e)(2) .....	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes .....	No.
§ 63.7(e)(3) .....	Test Run Duration .....	1. Must have three test runs of at least 1 hour each	Yes .....	No.
		2. Compliance is based on arithmetic mean of three runs.	Yes .....	No.
		3. Conditions when data from an additional test run can be used.	Yes .....	No.
§ 63.7(f) .....	Alternative Test Method .....	Procedures by which Administrator can grant approval to use an alternative test method.	Yes .....	No.
§ 63.7(g) .....	Performance Test Data Analysis ....	1. Must include raw data in performance test report ..	Yes .....	No.
		2. Must submit performance test data 60 days after end of test with the Notification of Compliance Status.	Yes .....	No.
		3. Keep data for 5 years .....	Yes .....	Yes.
§ 63.7(h) .....	Waiver of Tests .....	Procedures for Administrator to waive performance test.	Yes .....	No.
§ 63.8(a)(1) .....	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard ....	Yes .....	Yes.



TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.8(a)(2) .....	Performance Specifications .....	Performance Specifications in appendix B of part 60 apply.	Yes .....	No.
§ 63.8(a)(3) .....	[Reserved] .....	.....	Yes .....	Yes.
§ 63.8(a)(4) .....	Monitoring with Flares .....	.....	No .....	No.
§ 63.8(b)(1) .....	Monitoring .....	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes .....	Yes.
§ 63.8(b)(2)–(3) .....	Multiple Effluents and Multiple Monitoring Systems.	1. Specific requirements for installing monitoring systems.	Yes .....	Yes.
		2. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise.	Yes .....	Yes.
		3. If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes .....	Yes.
§ 63.8(c)(1) .....	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes .....	No.
§ 63.8(c)(1)(i) .....	Routine and Predictable SSM .....	.....	No .....	No.
§ 63.8(c)(1)(ii) .....	SSM not in SSMP .....	.....	No .....	No.
§ 63.8(c)(1)(iii) .....	Compliance with Operation and Maintenance Requirements.	1. How Administrator determines if source complying with operation and maintenance requirements.	Yes .....	Yes.
		2. Review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes .....	Yes.
§ 63.8(c)(2)–(3) .....	Monitoring System Installation .....	1. Must install to get representative emission and parameter measurements.	Yes .....	No.
		2. Must verify operational status before or at performance test.	Yes .....	No.
§ 63.8(c)(4) .....	Continuous Monitoring System (CMS) Requirements.	.....	No .....	No.
§ 63.8(c)(5) .....	Continuous Opacity Monitoring Systems (COMS) Minimum Procedures.	.....	No .....	No.
§ 63.8(c)(6) .....	CMS Requirements .....	.....	No .....	No.
§ 63.8(c)(7)–(8) .....	CMS Requirements .....	Out-of-control periods, including reporting:	Yes .....	No.
		1. If you are a puncture sealant application affected source.	No .....	No.
§ 63.8(d) .....	CMS Quality Control .....	.....	No .....	No.
§ 63.8(e) .....	CMS Performance Evaluation .....	.....	No .....	No.
§ 63.8(f)(1)–(5) .....	Alternative Monitoring Method .....	Procedures for Administrator to approve alternative monitoring.	Yes .....	Yes.
§ 63.8(f)(6) .....	Alternative to Relative Accuracy Test.	.....	No .....	No.
§ 63.8(g) .....	Data Reduction .....	.....	No .....	No.
§ 63.9(a) .....	Notification Requirements .....	Applicability and state delegation .....	Yes .....	Yes.
§ 63.9(b)(1)–(5) .....	Initial Notifications .....	1. Submit notification 120 days after effective date ....	Yes .....	Yes.

TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
		2. Notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup. 3. Contents of each .....	Yes .....	Yes.
			Yes .....	Yes.
§ 63.9(c) .....	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes .....	Yes.
§ 63.9(d) .....	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want for to comply 3 years after effective date.	Yes .....	Yes.
§ 63.9(e) .....	Notification of Performance Test ....	Notify Administrator 60 days prior .....	Yes .....	No.
§ 63.9(f) .....	Notification of VE/Opacity Test .....	.....	No .....	No.
§ 63.9(g) .....	Additional Notifications When Using CMS.	.....	No .....	No.
§ 63.9(h) .....	Notification of Compliance Status.	1. Contents .....	Yes .....	Yes.
		2. Due 60 days after Status end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after.	Yes .....	Yes.
		3. When to submit to Federal vs. State authority. ....	Yes .....	Yes.
§ 63.9(i) .....	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes .....	Yes.
§ 63.9(j) .....	Change in Previous Information .....	Must submit within 15 days after the change .....	Yes .....	Yes.
§ 63.10(a) .....	Recordkeeping/Reporting .....	1. Applies to all, unless compliance extension .....	Yes .....	Yes.
		2. When to submit to Federal vs. State authority .....	Yes .....	Yes
		3. Procedures for owners of more than 1 source .....	Yes .....	Yes
§ 63.10(b)(1) .....	Recordkeeping/Reporting .....	1. General Requirements .....	Yes .....	Yes
		2. Keep all records readily available .....	Yes .....	Yes
		3. Keep for 5 years .....	Yes .....	Yes
§ 63.10(b)(2)(i)–(iv) .....	Records related to Startup, Shut-down, and Malfunction.	.....	No .....	No.
§ 63.10(b)(2)(vi) and (x)–(xi).	CMS Records .....	1. Malfunctions, inoperative, out-of-control: a. If you are a puncture sealant application affected source. b. If you are a tire production or tire cord production affected source. 2. Calibration checks: a. If you are a puncture sealant application affected source. b. If you are a tire production or tire cord production affected source. 3. Adjustments, maintenance: a. If you are a puncture sealant application affected source. b. If you are a tire production or tire cord production affected source.	Yes .....	No.
			No .....	No.
			Yes .....	No.
			No .....	No.
			Yes .....	No.
			No .....	No.
§ 63.10(b)(2)(vii)–(ix) ....	Records .....	1. Measurements to demonstrate compliance with emission limitations. 2. Performance test, performance evaluation, and visible emission observation results. 3. Measurements to determine conditions of performance tests and performance evaluations.	Yes .....	Yes.
			Yes .....	Yes.
			Yes .....	Yes.
§ 63.10(b)(2)(xii) .....	Records .....	Records when under waiver .....	Yes .....	Yes.

TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.10(b)(3) .....	Records .....	Applicability Determinations .....	Yes .....	Yes.
§ 63.10(c) .....	Records .....	.....	No .....	No.
§ 63.10(d)(1) .....	General Reporting Requirements ...	Requirement to report .....	Yes .....	Yes.
§ 63.10(d)(2) .....	Report of Performance Test Results.	When to submit to Federal or State authority .....	Yes .....	No.
§ 63.10(d)(3) .....	Reporting Opacity or VE Observations.	.....	No .....	No.
§ 63.10(d)(4) .....	Progress Reports .....	Must submit progress reports on schedule if under compliance extension.	Yes .....	Yes.
§ 63.10(d)(5) .....	Startup, Shutdown, and Malfunction Reports.	.....	No .....	No.
§ 63.10(e) .....	Additional CMS Reports .....	.....	No .....	No.
§ 63.10(f) .....	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive .....	Yes .....	Yes.
§ 63.11 .....	Flares .....	.....	No .....	No.
§ 63.12 .....	Delegation .....	State authority to enforce standards .....	Yes .....	Yes.
§ 63.13 .....	Addresses .....	Addresses where reports, notifications, and requests are sent.	Yes .....	Yes.
§ 63.14 .....	Incorporation by Reference .....	Test methods incorporated by reference .....	Yes .....	Yes.
§ 63.15 .....	Availability of Information .....	Public and confidential information .....	Yes .....	Yes.

[FR Doc. 00-26224 Filed 10-17-00; 8:45 am]

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# Federal Register

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**Wednesday,  
October 18, 2000**

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## **Part III**

# **Department of the Interior**

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## **Fish and Wildlife Service**

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**50 CFR Parts 25, 26 and 29  
Final Compatibility Regulations Pursuant  
to the National Wildlife Refuge System  
Improvement Act of 1997; Final Rule  
Final Compatibility Policy Pursuant to the  
National Wildlife Refuge System  
Improvement Act of 1997; Notice**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR parts 25, 26 and 29**

[1018-AE98]

**Final Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** This rule contains the final changes to Parts 25, 26 and 29 of Title 50 of the Code of Federal Regulations (CFR) that describe the process for determining whether or not a use of a national wildlife refuge (refuge) is a compatible use. These changes are necessary to implement the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRISA-1997) that amends the National Wildlife Refuge System Administration Act of 1966 (NWRISA-1966). Also, published concurrently in the notice section of this **Federal Register** is our final compatibility policy describing in more detail the process for determining whether or not a use of a refuge is a compatible use.

**DATES:** This rule is effective November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of this final rule or for additional information, contact: J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203 (Telephone 703/358-1744, Fax 703/358-2248). You may also download a copy from: <http://www.fws.gov/r9pdm/home/newfinalrule.html>.

**SUPPLEMENTARY INFORMATION:** We published the Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49056). In addition, we published the Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49067). We invited the public to provide comments on the proposed rule and draft policy by November 8, 1999. During this 60-day comment period, we received several requests for an extension to the comment period. In order to ensure that the public had an

adequate opportunity to review and comment on the proposed rule and draft policy, we extended the comment period until December 8, 1999 (64 FR 62163 and 62217 published November 16, 1999). Therefore, the proposed rule and draft policy were available for public review and comment for 90 days. We revised the proposed rule and draft policy based on comments we received.

**Background**

The NWRISA-1997 amends and builds upon the NWRISA-1966 providing an "Organic Act" for the National Wildlife Refuge System. The NWRISA-1997 clearly establishes that wildlife conservation is the singular National Wildlife Refuge System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRISA-1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the refuge. We built this legal requirement into our policy and regulations. Since 1966, the compatibility standard for refuge uses has helped us manage refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRISA-1997 maintains the compatibility standard as provided in the NWRISA-1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. These regulations will help ensure that compatibility becomes a more effective conservation standard, is more consistently applied across the entire National Wildlife Refuge System, and is more understandable and open to involvement by the public.

The House Report accompanying the NWRISA-1997 states "Currently, the law does not include a mission or a definition of a "compatible use" for the Refuge System. Refuge managers are responsible for determining, on a case-by-case basis, whether activities on refuges are compatible. Management of the Refuge System has been the focus of numerous studies in the last two decades, including two General Accounting Office reports, two reports of advisory boards to the Interior Department, a report prepared by the USFWS, and several hearings by the former Committee on Merchant Marine

and Fisheries, which then had jurisdiction over the Refuge System. These reports and hearings highlighted that refuges have not always been managed as a national system because of the lack of an overall mission for the System. These reports concluded that the lack of an overall mission and management procedures had allowed numerous incompatible uses to be tolerated on wildlife refuges." The House Report further states "H.R. 1420 establishes that the conservation of fish, wildlife, plants and their habitats is the mission of the National Wildlife Refuge System and sets forth the policy and procedures through which the System and individual refuges are to be managed in order to fulfill that mission for the long-term benefit of the American public. H.R. 1420 requires that public use of a refuge may be allowed only where the use is compatible with the mission of System and purpose of the individual refuge, and sets forth a standard by which the Secretary shall determine whether such uses are compatible." Lastly, the House Report states "The Committee expects that this legislation will diminish the likelihood of future litigation by providing a statutory compatibility standard, a process for making those determinations, a clear conservation mission for the System, and a planning process that will ensure greater public involvement in management decisions on refuges."

The NWRISA-1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not

inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSA-1966 or the Refuge Recreation Act of 1962 (RRA-1962) for wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSA-1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSA-1997 and the effective date of these compatibility regulations under the existing compatibility process. After the effective date of these regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in these regulations.

We will issue final regulations establishing the process for determining whether or not a use of a national wildlife refuge is a compatible use. These regulations will:

1. Identify the refuge official responsible for making compatibility determinations;
2. Require an estimate of the time-frame, location, manner, and purpose of each use;
3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;
4. Require that compatibility determinations be made in writing;
5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;
6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;
7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and

conditions of the authorization, not examine the authorization itself;

8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at least every 15 years, whichever is earlier; and

9. Provide an opportunity for public review and comment on each evaluation of a use, unless we have already provided an opportunity during the development or revision of a Comprehensive Conservation Plan for the national wildlife refuge or have already provided an opportunity during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

#### **Purpose of This Final Rule**

The purpose of this final rule is to establish in regulation the process for determining compatibility of proposed refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSA-1997. Published concurrently in this **Federal Register** is our final compatibility policy, Part 603 Chapter 2 of the Fish and Wildlife Service Manual, which reflects this final rule and provides additional detail for each step in the compatibility determination process.

#### **Summary of Comments Received**

We received 506 comment letters by mail, fax or email on our proposed rule and draft policy. They were from Federal, State and local governments, Members of U.S. Congress, Alaska Native Village Corporations, non-government organizations, research institutions and individuals.

Some comments addressed specific elements in the proposed rule and specific elements in the draft policy, while many comments addressed an issue that was common to both the proposed rule and draft policy. Since the comments on the proposed rule and draft policy were so intertwined and oftentimes a comment on an issue was directly related to both the proposed rule and draft policy, we chose to address the comments collectively by issue rather than by proposed rule and draft policy separately. Since we analyzed the comments collectively on the proposed rule and draft policy, we

are including a full summary of the comments and our responses in the **SUPPLEMENTARY INFORMATION** section of this final rule only and not in the **SUPPLEMENTARY INFORMATION** section of the notice of our final policy.

We considered all of the information and recommendations for improvement included in the comments and made changes to the proposed rule and draft policy where appropriate. The number of issues addressed in each comment letter varied widely, ranging from one issue to several issues. We identified 28 groups of issues. Following are our responses to those groups of issues.

#### *Issue 1: Jurisdiction*

We received one comment suggesting that compatibility applies to Coordination Areas and National Fish Hatcheries under the Refuge Recreation Act of 1962 (RRA-1962). The NWRSA-1997 states “\* \* \* the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use \* \* \*” The House Report accompanying the NWRSA-1997 states “Coordination Areas have been well managed by the States under State laws and regulations, in many cases for decades. However, they are part of the Refuge System. They are specifically excluded from the definition of the term ‘refuge’ in new Section 5(11) so as not to require every State management decision to be approved by the USFWS through the processes established by H.R. 1420.” The NWRSA-1997 and its legislative history make it clear that although Coordination Areas are in the National Wildlife Refuge System, they are not subject to compatibility requirements as are other areas. National Fish Hatcheries are dealt with in 50 CFR Chapter 70.

One commenter requested that we exempt only military overflights above a refuge from compatibility. The NWRSA-1997 specifically exempts “overflights above a refuge” from determinations of compatibility. The law does not differentiate between military and non-military overflights. This exemption from compatibility applies to all overflights. The Service does not have the authority to change this exemption provided in law.

One commenter suggested adding a statement about communication between the Refuge Manager and personnel at local airports, pilot training schools, and private pilot groups regarding the Federal Aviation Administration's requested minimum altitudes over refuges as the most effective way to protect refuge resources

when the Refuge Manager deals with non-military overflights. We agree that this additional information may help refuge managers deal with non-military overflights and we incorporated it into the policy.

We received comments concerning the effects this rule and policy might have on water rights. A commenter pointed out that the NWRSA-1997 did not affect any existing water right nor did it create any new reserved water right. The NWRSA-1997 addressed a number of issues concerning the National Wildlife Refuge System; however, these regulations and policy implement only those sections of the NWRSA-1997 dealing with compatibility and they do not affect any existing water right nor do they create any new reserved water right.

#### *Issue 2: Closed Until Open*

Several organizations wrote in support of the proposed language in 50 CFR 25.21(a) which states clearly that except as otherwise provided, "all areas acquired or withdrawn for inclusion in the National Wildlife Refuge System are closed to public access until and unless we open the area for a use or uses in accordance with the NWRSA-1966, the RRA-1962 and this subchapter C." This is not new and has been the legal standard for uses within the National Wildlife Refuge System for many years. Several other commenters pointed out, however, that there is a somewhat different standard for Alaska refuges. The compatibility standard is applicable to all refuges no matter where they are located. We are not changing the status of refuge uses in Alaska. See 50 CFR 36 for regulations governing Alaska refuges.

A few commenters also stated that all areas included in the National Wildlife Refuge System should be open for public wildlife-dependent recreational uses. We agree that we should offer these opportunities following the guidelines established by the NWRSA-1997, but all such uses are still subject to a compatibility review, and we must find them to be compatible before allowing them.

#### *Issue 3: Definitions*

We received many comment letters that addressed 12 of the 23 definitions we provided in the proposed rule and draft policy. Several commenters spoke generally about the definitions section and were either supportive of or opposed to our definitions. One commenter felt that the proposed definition changes should not take place at all, and that the definitions provided in the NWRSA-1997 are both sufficient

and better than what we provide in the regulations and policy. One commenter wanted to make sure that the definitions in the regulations follow the intent of the NWRSA-1997. We believe that the definitions we provide in these regulations and policy are consistent with the NWRSA-1966, as amended by the NWRSA-1997. In addition, we believe that these definitions are necessary to consistently apply the compatibility regulations and policy throughout the National Wildlife Refuge System. Lastly, we added one additional definition, Regional Chief, that was not included in the proposed rule and draft policy. Following are discussions of the comments we received on specific definitions.

#### *Compatibility Determination*

One commenter believes that the Refuge Manager should not have autonomy in making compatibility determinations. We address this concern in Issue 4: Decision Making Authority and Appeal Process.

#### *Compatible Use*

We received several comments on the definition of compatible use. The major concern centered around our proposal to delegate the decision making authority for compatibility determinations from the Director through the Regional Director to the Refuge Manager. We address this concern in Issue 4: Decision Making Authority and Appeal Process. We received comments that addressed the inclusion of "major" in the definition of compatible use. Although some expressed support, others requested we delete the word, asserting that the NWRSA-1997 does not use this qualifier in the definition. They pointed out that it defines a compatible use as one which "does not materially interfere with or detract from the fulfillment of \* \* \* the purposes of the refuge." We agree and have deleted the word "major" to conform to the provisions of the NWRSA-1997. This will not result in changes to current practice, as we have not made such a distinction previously with regard to compatibility determinations.

#### *Comprehensive Conservation Plan*

One commenter recommended adding "maintain and, where necessary, restore the biological integrity, diversity, and environmental health of the Refuge System" to the definition. We incorporated this recommended change with a slight modification. We are using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health."

Another commenter stated that "Preparation of the CCP should be carefully coordinated with the state fish and wildlife agency. To the maximum extent possible, issues dealing with hunting, trapping and fishing regulations should be consistent with state rules and regulations. In addition, issues dealing with management of fish and wildlife habitat should be consistent with state fish and wildlife conservation plans and policies." This recommended change is beyond the scope of these regulations and policy but this issue was addressed when we recently published our draft (64 FR 44368 published August 13, 1999) and final (65 FR 33892 published May 25, 2000) refuge planning policy in the **Federal Register**. We stated in our final refuge planning policy that "We will provide representatives from appropriate State and Tribal conservation agencies \* \* \* the opportunity to serve on planning teams." We will provide a formal written request inviting States, Tribes, and other appropriate agencies to join the refuge planning effort at the beginning of the process. Adequate coordination with States, Tribes, other agencies, and the general public includes an invitation to participate, actual participation in our processes, regular and good communication, use of appropriate tools and materials to aid coordination, a sense of team work from all parties, and resulting successful partnerships beyond the planning phase. Our final refuge planning policy provides for all the processes and procedures for us to meet our responsibility for agency coordination. We encourage State and other agency involvement throughout the planning and management processes, including implementation and review. Furthermore, by being a member of the refuge planning team, State agencies will have a direct opportunity to assure that we accurately reflect or respond to their comments in the CCP document or in our analysis. While we recognize the need for input and feedback from others, we recognize the possibility of debate or alternative management direction, if guided solely by other influences. For this reason, while we encourage full input from the States and other entities in our plans, we retain management and decision-making authority for all units of the National Wildlife Refuge System, including approval of CCPs.

#### *Conservation, and Management*

Two commenters supported the current definition. One commenter recommended referring to the NWRSA-

1997 rather than the NWRSA-1966. The commenter feels that this definition flows from the NWRSA-1997 rather than the NWRSA-1966. This definition quotes the definition provided by the NWRSA-1997 except that it clarifies that “\* \* \* this Act, \* \* \*”, referred to in the definition in the law, is the NWRSA-1966. One commenter recommended adding, “including, but not limited to fishing, hunting and trapping” after the term “regulated taking.” The definition includes “regulated taking” as one of several examples of methods and procedures associated with modern scientific resource programs. The examples provided in the definition are protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking. These are broad categories of examples and they could all be further expanded upon similar to the recommendation for “regulated taking.” However, we believe these examples are clear and it is not necessary to further expand upon any of these examples. One commenter recommends adding restoration to the definition. The definition includes the term “restore and enhance” and therefore we believe this recommendation is already incorporated. For these reasons we believe this definition is appropriate as written.

#### National Wildlife Refuge, and Refuge

Three commenters, the International Association of Fish and Wildlife Agencies and the States of Colorado and West Virginia, stated that the definition should be consistent with the NWRSA-1997, and its legislative history, and it should not extend our authority beyond our property interest. Whereas The Friends of Oxbow National Wildlife Refuge said “Some areas, particularly former military bases, may be designed for transfer to the refuge system. The Service has a compelling interest in land and water use within such areas. Because this interest may be subtle or have longer-term implications, individuals or government agencies may overlook it.” We understand and appreciate the rationale behind this comment, but as we understand the comment, this interpretation of interest refers to a likely future interest of the Service. The word “interest” in the definition refers to the extent of that interest, right, or privilege that we possess, not what we may eventually possess. We believe this definition is appropriate as is and consistent with the law.

#### National Wildlife Refuge System, and System

In the process of addressing comments we decided that we need to clarify the definition of the National Wildlife Refuge System. Essentially, the Service has historically interpreted the NWRSA-1966 as including all areas administered by us for the protection and conservation of fish and wildlife. (See 50 CFR 25.12(a) National Wildlife Refuge System; 1999.) Because current regulations do not make it clear how those “areas” are identified, we are specifying that for those areas not specifically listed in the law or this regulation but that are nevertheless managed by the Service, the Director, only, will determine (in writing) if they are areas administered “for the protection and conservation of fish and wildlife.” If so, such areas are included in the System. We are also making clear that if we are directed to manage an area for the protection and conservation of fish and wildlife by a Presidential or Secretarial order, it will be managed as part of the System. Finally, the House Report accompanying H.R. 1420, in discussing the fact that “coordination areas” managed by States are not refuges for compatibility determination purposes, they are still part of the System and we have, accordingly, added it to the specific list.

#### National Wildlife Refuge System Mission, and System Mission

We received comments from The Wildlife Management Institute, The Wildlife Society and The Conservation Force on the definition of National Wildlife Refuge System mission, and System mission. These commenters agreed with the definition that we took directly from the NWRSA-1997. However, they are concerned that we refer to the National Wildlife Refuge System mission as “wildlife conservation is the singular” National Wildlife Refuge System mission. On occasion, although not in these **Federal Register** documents, we also use the term “wildlife first” to refer to the National Wildlife Refuge System mission. We agree that the National Wildlife Refuge System mission as stated in the NWRSA-1997 is the National Wildlife Refuge System mission in its entirety, but we also believe our use of the terms “wildlife conservation” and “wildlife first” when referring to the National Wildlife Refuge System mission are consistent with the NWRSA-1997 and supported by the House Report. The House Report states “\* \* \* the fundamental mission of our Refuge System is wildlife conservation:

wildlife and wildlife conservation must come first.” We did not include the term “wildlife conservation is the singular” in either the regulations or policy, only in the preamble of the regulations and policy.

#### Purpose(s) of the Refuge

One commenter recommended deleting the term “or derived from” from the definition. The commenter is concerned that this language could lead to the creation of purposes not specified in the documents listed or not clearly intended by the documents listed. Two commenters recommended adding “major” before the word “purposes” in the title of this definition. One commenter recommended that we define “primary purposes” separately. The NWRSA-1997 provides the definition of “purpose(s) of the refuge” and one adjustment we made was to use “national wildlife refuge” in place of “refuge.” The term “or derived from” is in the law, and we believe it should stay in this definition. The NWRSA-1997 does not use the word “major” in this definition, it is not an operative term in our regulations and policy, and we believe it should not be added. Lastly, we added a statement to this definition that states for refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the refuge. We are taking this opportunity to add to our regulations and policy the Wilderness Act requirement that the purposes of that Act are “within and supplemental to the purposes” of refuges.

#### Refuge Management Activity

We received several comments on the definition of refuge management activity. One commenter recommended against including the definition in regulations. This commenter feels that a legislative power has been assumed, and that is reserved for Congress. We disagree with the comment regarding our authority and point out that we are authorized to adopt regulations necessary to carry out (implement) the NWRSA-1966. Another commenter refers to the fact that refuge management activity does not include references to actions to facilitate priority public uses. This commenter feels that the term is too limiting, and could prevent hunting and fishing accommodations. We believe that actions to facilitate priority public uses are more appropriately included in the definition of refuge use rather than refuge management activity and therefore we did not include this change in the definition. A third commenter wishes that the definition would include various monitoring and



studies. We provide several examples of a refuge management activity, like monitoring and studies, in the policy at 2.10 A and therefore we did not include this change in the definition. One commenter recommends the definition specifically include State management activities. We address and incorporate this recommendation in the policy at 2.10 A and therefore we did not include this change in the definition. See Issue 6: When is a compatibility determination required. Three commenters support the definition and agree that there is a difference between a refuge management activity and a refuge use. By defining these terms we are delineating for our refuge managers and the public what is or is not a use under the law.

#### Refuge Management Economic Activity

We received several comments on the definition of refuge management economic activity. Three commenters recommended eliminating trapping as an example of a refuge management economic activity. One commenter recommended the definition not include guide, outfitter, and trapping activities. We believe it is appropriate to include trapping as an example of a refuge management economic activity because it is an activity that results in generation of a commodity which is or can be sold. One of these three commenters stated that trapping should not be included within this definition because it is a priority public use as part of hunting. The NWRSA-1997 specifically lists six types of uses as wildlife-dependent recreational uses. The law and House Report discuss these six types of uses in numerous locations and they also describe them as the six priority general public uses of the National Wildlife Refuge System. Trapping is not one of the six priority public uses and is not a part of hunting. Three commenters recommended that the definition be strengthened by including the exclusion of oil and gas leasing, exploration, or production. We believe this recommendation goes beyond the scope of these regulations and policy. One commenter questions our authority to develop a definition in regulations that is not provided by Congress. As we stated above in the response regarding refuge management activity, we are authorized to adopt regulations necessary to carry out (implement) the NWRSA-1966. Another commenter questioned why we distinguish between refuge management economic activity and refuge management activity. Two commenters feel that, within the definition, the actions that meet refuge management purposes should not be

included in this category and the generation of income does not preclude these activities from contributing to refuge purposes. For the reasons discussed in the preamble of the proposed rule, we believe it is important to specifically define refuge management economic activity and we will require compatibility determinations for all refuge management economic activities. By doing so, we are not saying that generation of income precludes them from contributing to management, we are saying we will do compatibility determinations on them. We believe this definition is appropriate as is and necessary to help describe when a compatibility determination is required.

#### Refuge Use, and Use of a Refuge

A few commenters recommended we clarify that State management activities on refuges are not refuge uses and, therefore, not subject to compatibility. We address this concern in Issue 16: State involvement.

#### Sound Professional Judgment

Two commenters were against the definition including a reference to the National Wildlife Refuge System Administration Act of 1966. That aspect of the definition currently states “\* \* \* and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 \* \* \*” The argument for removing this statement from the proposed definition is that issues of compliance must not be confused with the exercise of mostly biological judgment. One commenter not only agrees with the definition adhering to the National Wildlife Refuge System Administration Act of 1966, but recommends adding “including the act’s directive to maintain biological integrity, diversity, and environmental health” to the definition. Another commenter recommends adding to the definition “including consideration of biological integrity and diversity, as interpreted by the Agency policy, whether or not the proposed use is an appropriate use under agency policy.” The law’s definition of sound professional judgment specifically includes the term “and adherence to the requirements of this Act.” The Act’s mandate to “ensure that the biological integrity, diversity, and environmental health of the System are maintained \* \* \*” is a significant legal requirement and is foundational for all refuge management decisions. It is not limited to compatibility determinations for refuge uses. We did not add this statement to this definition but we recognized its value with regard to

analyzing whether a use is compatible with the mission of the System. Because of that we added this concept in the discussion of “materially interfere with or detract from” in section 2.11(B) of our policy and “anticipated impacts of the use” in section 2.12(A)(8) of our policy. We are now using the term “ecological integrity” in lieu of the phrase “biological integrity, diversity, and environmental health.”

#### Wildlife-Dependent Recreational Use, and Wildlife-Dependent Recreation

One commenter recommended we add “trapping” to this definition. The NWRSA-1997 provides this definition and it does not include “trapping.” The law specifically lists six types of uses as wildlife-dependent recreational uses. The law and House Report discuss these six types of uses in numerous locations and they also describe them as the six priority general public uses of the National Wildlife Refuge System. Trapping is different from these priority public uses and the NWRSA-1997 does not include it in this list of six. The Service does not have the authority to add trapping to this definition. We believe the definition is appropriate as is.

#### Issue 4: Decision Making Authority and Appeal Process

We received a number of comments both in support of and opposition to the Refuge Manager’s authority to make compatibility determinations. Associated with this issue, we also received a number of comments requesting an appeal process for compatibility determinations. These comments include 222 individual comments with a common shared theme “please modify the draft to ensure that the public has an opportunity to appeal decisions that permit potentially harmful activities to occur on refuges.”

The NWRSA-1997 required, among other things, that we designate the refuge official responsible for making compatibility determinations. We have designated the Refuge Manager to be that person, because the Refuge Manager is in the best position to make an informed decision based on the site-specific nature of compatibility. We believe the House Report supports our decision to delegate the compatibility determination authority to the Refuge Manager. The House Report frequently refers to the Refuge Manager when discussing various elements of compatibility. As an example, the House Report states “In the exercise of sound professional judgment, the Refuge Manager considers \* \* \*” We believe that designating the Refuge Manager as

the refuge official responsible for making compatibility determinations is consistent with the intent of the law.

We also recognize the need for National Wildlife Refuge System-wide consistency when considering compatibility. As a number of commenters pointed out, there is a real need for refuge managers to make decisions based on a clear and full understanding of national resource management programs and policies, and the role the individual refuge plays in the larger universe of wildlife conservation. We agree that this is a real concern. To accommodate this concern, in the rule and policy we built in the requirement for refuge managers to receive concurrence from their Regional Chief on all compatibility determinations. We will follow the same compatibility process throughout the National Wildlife Refuge System; however, we will base each compatibility determination on a refuge-specific (refuge purposes) analysis in addition to a National Wildlife Refuge System (System mission) analysis. We have decided to change the required regional office consultation to a required regional office concurrence on all compatibility determinations. We believe this change addresses many of the concerns provided in a number of comments and will help ensure that we look at both large-scale (System mission) and local-scale (refuge purposes) issues when preparing compatibility determinations.

A number of commenters requested that we provide a procedure for administratively appealing compatibility determinations. Our proposed rule and draft policy did not include any changes to our existing appeal procedures. The draft policy simply referenced the locations of the procedures for appealing a permit denial. The NWRSA-1997 and the House Report were silent on this particular issue. However, on a related issue, the NWRSA-1997 requires that we provide an opportunity for public review and comment for all compatibility determinations. Although this is not an appeal process, it results in significantly more opportunity for the public to be involved in determinations of compatibility. This is a significant change from our existing compatibility policy and regulations, which do not require an opportunity for public review and comment. When making a compatibility determination, refuge managers will consider all information provided during the public review and comment period. In addition, anyone, at any time, may present relevant information on an existing, proposed, or

denied use to the Refuge Manager, and this information may cause us to re-evaluate a use for compatibility. We recognize the fact that frequently we will have both support of and opposition to our decisions on compatibility. However, the law squarely placed the authority and responsibility for making compatibility determinations with the Service. We are providing no administrative mechanism to appeal a compatibility determination except for uses of ANCSA 22(g) lands as discussed in Issue 5: Alaska.

#### *Issue 5: Alaska*

We received over 240 letters that addressed issues affecting the proposed rule or draft policy as they relate to Alaska refuges. These included 17 letters from: the State of Alaska; eight Native corporations; five national and one regional conservation organization; the Alaska Professional Hunter's Association; an environmental consulting business; and 225 letters from individuals.

Comments from the 17 letters received from organizations included 159 general comments, not specific to Alaska. We addressed these elsewhere in this document. The 17 letters also had 74 comments specific to the issue of how the compatibility policy and regulations affect Native lands conveyed from refuges under the provisions of the Alaska Native Claims Settlement Act (ANCSA), and how Section 22(g) of ANCSA applies. Additionally, we received 61 comments in these letters that addressed other Alaska-specific issues, generally associated with how the proposed actions relate to various provisions of the Alaska National Interest Lands Conservation Act (ANILCA). Two hundred twenty-two personal letters all contained the same comment in support of the compatibility requirements being applied to ANCSA 22(g) lands, as well as four other comments not specifically related to Alaska. We are responding to the Alaska-related comments in two parts: ANCSA 22(g) Lands; and ANILCA.

#### *ANCSA 22(g) Lands*

Congress enacted ANCSA to settle aboriginal land claims of Alaska's Natives by providing land and money in exchange for extinguishment of their land claims. The issue of which lands were available to Natives to select was a hotly debated topic. Ultimately some Federal lands, such as National Park lands, were taken out of the selection process. National wildlife refuge lands were made available by compromise language in the legislation that took the form of Section 22(g) of ANCSA. Section

22(g) of ANCSA reads: "If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act [December 18, 1971], shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge."

ANCSA had multiple purposes, primarily to settle the land claims issue, but also to provide Native Corporations opportunities for economic growth and prosperity. The balance that Congress struck specific to former refuge lands subject to Section 22(g) assured that by subjecting the lands to the laws and regulations of the refuge, future uses would not be allowed to occur if they materially impaired the values for which the refuge was originally established. Congressional intent is explained in a section by section analysis of ANCSA in Senate Report No. 92-405, at 34: "[T]his subsection provides that every patent issued by the Secretary pursuant to this section which covers lands lying within the boundaries of a Federal wildlife refuge on the date of enactment of this Act, shall contain a provision that such lands shall remain subject to the laws and regulations governing use and development of refuges as long as the lands continue within its boundaries. The purpose of this provision and limitation is to insure that the activities which take place within the refuges are compatible with the purposes for which the refuge was established. This section also assures continuing review by the appropriate Federal agencies."

The compatibility review requirement, established formally in law with the passage of the NWRSA-1966, has been a requirement for the use of 22(g) lands since the time that they were conveyed; however, as with uses on publicly owned refuge lands, such determinations were not required by law to follow any particular process. While the NWRSA-1966 required uses to be compatible with refuge purposes before they could be permitted, the NWRSA-1997 (which amended the NWRSA-1966) for the first time established a process for how compatibility determinations are to be made. The proposed regulations and draft policy will implement these legal requirements. We have noted comments

that expressed concern that the NWRSA-1997 created new rules that should not be applied to 22(g) lands, and we have provided significant clarifications on how the compatibility review process will be applied to 22(g) lands, and we have included nothing from the NWRSA-1997 amendments that did not previously have legal foundation in the NWRSA-1966. Additionally, while the plain reading of ANCSA requires all refuge laws and regulations to apply to 22(g) lands, we have historically maintained that the compatibility requirement is the most basic legal requirement to protect refuge lands against uses that materially interfere with refuges achieving their purposes. We have never proposed to apply any other legal standard to uses of 22(g) lands.

We received 222 personal letters that had a common theme of support for "clarifying that the compatibility test applies to certain lands in Alaska governed by the Alaska Native Claims Settlement Act." Additionally, The Wilderness Society, National Wildlife Refuge Association, Arctic Connections, National Audubon Society, and Defenders of Wildlife voiced support for including ANCSA 22(g) lands in the compatibility policy and regulations. We did this in the proposed rule and draft policy, but we have substantially modified these sections in the final rule and final policy to provide clarification as requested by public comment.

The National Audubon Society commented that, "[C]ompatibility applies as a minimum standard under the plain language of Section 22(g) (see *National Audubon Society v. Hodel*, 1984, where the Court held that Section 22(g) of ANCSA retains this compatibility test for lands selected and conveyed to natives within wildlife refuges in Alaska.) It could be argued that 22(g) actually means much more than conducting compatibility determinations, since the law states that all laws and regulations governing use and development of such Refuge apply." Audubon went on to say, however, that the Service may wish to clarify procedural differences that may be desirable for conducting compatibility determinations on 22(g) private inholdings versus refuge lands. We agree, and included clarifications suggested by Audubon and several Native organizations in the final rule.

The National Wildlife Refuge Association wrote: "[T]he draft policy and regulations state that the compatibility requirements apply to the Alaska Native Claims Settlement Act Section 22(g) lands within Alaskan Refuges. While this is true, Section 22(g)

requires that all Refuge rules and regulations be applied. This plain reading of the law should not be ignored. Section 22(g) was an extreme compromise in which Native land claims entitlements were allowed to come from existing National Wildlife Refuges, subject to this very significant covenant. Many argued at the time that settlement lands should not come from Refuges at all. National Park lands were placed off limits, but Refuge lands were offered in the legislation as a compromise. The Section 22(g) restrictions were, however, included as significant protection to the long-term integrity of the Alaskan National Wildlife Refuges subjected to the conveyances. While many Native landowners may object to Refuge regulations being applied to a portion of their lands, the 22(g) covenant must not be further eroded. Language in the final rule should clarify that all rules and regulations apply to the 22(g) lands, in addition to the compatibility requirement." Arctic Connections voiced a similar opinion in stating that the proposed regulatory standards for 22(g) lands should be "at a minimum." We understand these concerns; however, after many years experience addressing this issue, we believe that we have met Congressional intent by applying the legal compatibility standard to 22(g) lands. The compatibility standard was the basic feature in refuge law (NWRSA-1966) at the time ANCSA was enacted. We expect it to continue to provide adequate protection to refuges as adopted here.

Middleton & Timme, P.C., on behalf of Koniag, Inc. took strong exception to the proposed rule and stated that they believe that the proposed regulations, specifically their application of the standards and procedures contained in the NWRSA-1997 as they were proposed to apply to Native Corporations, fundamentally alter the condition under which the Native Corporations received their land entitlements. They continue by stating that, "[C]ongress clearly did not intend the 1997, Act to have such an impact on Native Corporations' private property rights."

We have carefully reviewed these concerns and have clarified specifically how compatibility is to apply to 22(g) lands based on substantial comments from Koniag and others. In doing so, we have been careful to include only procedural elements for conducting compatibility determinations for uses on 22(g) lands that were acceptable under the original NWRSA-1966 and as suggested by Native Corporations in this

rulemaking process. These clarifications are substantial and, while recognizing that 22(g) lands are subject to compatibility review, acknowledge that 22(g) lands are also private lands that deserve special attention. We believe we have the authority to adopt regulations that address compatibility differently from those that deal with our own lands because we are, in effect, stating how we are going to implement and require compliance with a provision in a patent. We do this because the duty imposed by ANCSA is to include the provision in the patent. ANCSA itself does not impose the obligation of refuge laws and regulations. In other words, doing something which would not be allowed by the NWRSA-1966 or regulations adopted thereunder is not a violation of the NWRSA-1966, its regulations, or ANCSA. It is a violation of the provision in the patent. Our intent is to give meaning to the requirements of the provision and at the same time give meaning to the nature of the private lands selected per ANCSA.

Comments by Koniag relative to this issue are paraphrased below, with responses given following each issue.

*Comment:* 43 CFR 2650(4-6) requires that economic uses of 22(g) lands be permitted unless those uses materially impair the refuge.

*Response:* We believe these regulations are consistent with this provision.

*Comment:* The definition of compatible use is troubling in that it requires the use to be compatible not only with refuge purposes, but also with the mission of the National Wildlife Refuge System.

*Response:* The clarifying changes affecting compatibility determinations for 22(g) lands now include only the requirement to be compatible with refuge purposes since the requirement related to the National Wildlife Refuge System mission is a product of the NWRSA-1997 that was not required at the time ANCSA was enacted. Again, while it may well be interpreted that the reference to refuge laws and regulations included in Section 22(g) meant all past, present, and future laws that Congress passed affecting national wildlife refuges, we have chosen to interpret the language as refuge laws and regulations that were in place at that time, since these were the conditions in which Native Corporations made their ANCSA selections. The sole exception to this is that refuge managers are to complete their compatibility determinations for 22(g) lands evaluating uses against both pre-ANILCA and post-ANILCA refuge purposes (if conflicts ever arise, the ANILCA purposes are to take

precedence). The reason for this is that we believe that Congress passed ANILCA, in its entirety, with knowledge of how it would impact ANCSA. From a practical standpoint, in support of Native interests, this also provides that we prepare compatibility determinations keeping subsistence in mind since subsistence was a Congressionally mandated purpose added to 15 of the 16 Alaska refuges that had not been included prior to the passage of ANILCA.

*Comment:* The definition of compatible use is troubling because it is whatever the Refuge Manager determines it to be within his "sound professional judgment."

*Response:* A refuge manager does not have unfettered discretion as the comment implies. The law defines compatible use to be one that "will not materially interfere with or detract from." A refuge manager must base the determination on this standard and the procedures adopted in these regulations and policy will require that decision to be verbally and publically analyzed. Because of the desire of several commenters regarding this issue, we have included an appeal process in the final regulation that will allow 22(g) landowners to have their concerns reviewed by the Alaska Regional Director should a refuge manager find a proposed use to be not compatible. Also, refuge managers must receive concurrence from their Regional Chief on all compatibility determinations.

*Comment:* The 1997 Act gives the Refuge Manager the discretion to deny a use based on public safety even if he determines the use to be compatible.

*Response:* We have clarified the compatibility regulations as they apply to 22(g) lands and refuge managers will be reviewing only for the compatibility of proposed uses. Public safety is only an issue to the 22(g) landowner if they choose to allow public access to their lands. We do not have the authority to open 22(g) lands to public use and are not responsible for any public use that may occur, either by permission of the 22(g) landowner, or in trespass.

*Comment:* We do not believe that the 1997 Act applies to 22(g) lands. The Service has apparently taken the view that there is no inconsistency in the regulations and that the proposed regulation will not alter the practice of the Service regarding 22(g) lands. If this is true, the proposed regulations are in dire need of clarification.

*Response:* The NWRSA-1997 amended the NWRSA-1966. The NWRSA-1966 clearly did apply to 22(g) lands, including the compatibility provisions. This has been so stated in

correspondence, legal reviews, and policy discussions for many years. The proposed rule only would have formalized the compatibility determination process: it did not create the requirement to conduct the determination. We have, however, agreed that clarification is warranted in the final rule and 22(g) lands will be treated separately than public refuge lands.

*Comment:* There is a presumption of incompatibility in the event there is insufficient information to make a compatibility determination.

*Response:* Refuge managers must make their compatibility determinations on 22(g) lands based on available information and sound professional judgment. It is the responsibility of the applicant to provide information adequate to support the proposed use.

*Comment:* When a government-sponsored refuge use is competing with a 22(g) use, this situation will involve an inherent conflict for the Refuge Manager. Allowing such interested parties to determine the fate of a corporation's private property rights would violate the most fundamental notions of due process.

*Response:* Refuge managers have no authority to initiate or actually manage uses on 22(g) lands. They do, however, have responsibility for determining if such uses would have impacts that spill over onto adjacent refuge lands to the degree that they materially interfere with the refuge's ability to achieve its legally mandated purposes. This is the fundamental protection provided to the parent refuges from the effects of uses of 22(g) lands that Congress provided in Section 22(g) of ANCSA. Because of concerns expressed by comments; however, an avenue for appeal was added to the compatibility process for 22(g) lands so that 22(g) landowners have some recourse should a refuge manager determine a use to be not compatible.

Other Native Corporations questioned the applicability of the NWRSA-1997 to 22(g) lands and expressed the need for significant clarifications on how the compatibility process was to be applied differently to 22(g) lands. Many of the points of clarification followed the concerns expressed by Koniag and are not specifically reiterated. Calista Corporation stated that, "[W]e believe that ANCSA Section 22(g) lands are a unique class of private lands within the National Wildlife Refuge System and should be treated by separate provision in the Compatibility Regulations." We agree. Calista, in addition to discussing the issues of determining compatibility by including the mission of the National

Wildlife Refuge System, the need to stress that uses must be allowed unless they will materially interfere with refuge purposes, and concern over the ability to find a use not compatible if there is a lack of data, also raised two new issues. First, they believe that periodic reviews of the compatibility of uses of 22(g) land is unnecessary if these uses do not change substantially. Second, they state that village land use should not be subject to continual review and uncertainty regarding long-range plans and goals. We have clarified in the final rule that, for 22(g) land uses, the 10-or 15-year required review will not apply. We will prepare compatibility determinations only once for a proposed use on 22(g) lands and will revise them only if the use changes significantly, if substantially new information is made available that could affect the determination, or if requested by the landowner. Additionally, land use planning for 22(g) lands will not be subjected to refuge comprehensive conservation planning processes, and compatibility determinations affecting 22(g) lands will not be automatically reviewed when the refuge plans are updated.

Cook Inlet Region, Inc. (CIRI) questioned the applicability of the NWRSA-1997 but provided nine suggestions for improving the final rule specific to how the Service does compatibility reviews for uses of 22(g) lands. We have already addressed six of these recommendations in response to other comments. CIRI commented that the use of compensatory mitigation should not be totally foreclosed on 22(g) lands. We believe that our policy of not allowing compensatory mitigation is appropriate and can be effectively administered on 22(g) lands. CIRI took exception to the definition of compatible use in its inclusion of the phrase "wildlife-dependent recreational use," stating that this is inappropriate for 22(g) lands, as well as for the rest of lands in Alaska. The concern is understood, but the definition comes from the NWRSA-1997 and includes all other uses. Compatibility determinations are based on what the specific refuge purposes are. The concern should be lessened by recognizing that specific refuge purposes for Alaska refuges include (in 15 of the 16 refuges) a purpose for subsistence, meaning that in part, we will have to determine proposed uses to be compatible with the continuation of subsistence uses on those refuge lands. CIRI also commented that it should be made clear that compatibility determinations for uses of 22(g) lands

should only be required to the degree that the proposed activity has spill over effects on the adjacent refuge lands, and that uses that do not have this spill over effect should not be subject to a compatibility determination. We agree that compatibility determinations for 22(g) lands are not to be treated as though they are still refuge lands, rather, the proposed uses are to be evaluated against how they would impact refuge lands, not how they would impact the 22(g) lands. We do not agree; however, that where this "spill over" effect does not occur, compatibility determinations are not required. The determinations will still be required, but such uses will be found compatible. Finally, CIRI states that its oil, gas, and coal interests in Kenai National Wildlife Refuge are not to be governed by the proposed compatibility determinations. We agree in part. The subsurface property interest conveyed to CIRI for oil, gas, and coal was conveyed under the provisions of ANCSA and, therefore, such property interest is subject to Section 22(g). In this case, however, the "Terms and Conditions" settlement referenced by CIRI amounts to a property interest that guarantees CIRI certain rights to explore for and develop petroleum resources. While we retain some ability to regulate surface use and procedures, we cannot deny CIRI reasonable access to their subsurface estate.

King Cove Corporation wrote in support of the conservation goals underlying the NWRSA-1997 and the proposed regulations, but expressed concerns that the regulations be implemented in a manner that not impinge upon Native traditional uses and needs. Concern was expressed that inadequate instruction was provided to refuge managers on how to determine whether a use materially interfered with refuge purposes. Further, King Cove Corporation suggested that regulations provide that subsistence and other traditional uses made of the resource to foster and support Native culture and the health and welfare of Native peoples, be presumed to be compatible uses, absent a showing of extraordinary circumstances. Seven specific recommendations on improving the final rule were provided by the Corporation. These were similar to recommendations made by other Native Corporations and we addressed them in specific clarifying additions to the final rule. King Cove Corporation also recommended that analysis for compatibility include evaluation of the socioeconomic impacts on affected rural communities. The law does not allow this. Compatibility reviews can only

look at effects of proposed uses relative to the legally established purposes of the refuge.

Kaktovik Inupiat Corporation (KIC), and the Alaska Federation of Natives, Inc. (AFN), provided similar comments which addressed approximately 15 issues relative to compatibility requirements for 22(g) lands. We addressed all but three of these issues in previous comments. These include recommendations relative to clarifying that 22(g) lands are different than other refuge lands, re-evaluations of compatibility, discretionary denial authority, appeals, evaluating uses against the National Wildlife Refuge System mission, jurisdictional concerns, and subsistence as a priority use. KIC and AFN raised additional issues related to issuing of refuge permits, compensation for uses of 22(g) lands, and using Sections 1307 and 1308 of ANILCA to implement the regulations. The commenters stated their desire that proposed uses of 22(g) lands not be subject to the Service's permitting system. We accept this. The final rule states that we will require no additional permits for uses of 22(g) lands beyond the completion of a compatibility determination by the Refuge Manager that finds the use to be compatible with refuge purposes. Any conditions necessary to ensure a proposed use is compatible may be included in the compatibility determination. Comments also stated the desire that compensation be granted for uses of 22(g) lands in the same manner as any other private landowner is compensated for the use of their lands. We do not believe this to be an issue in that we do not allow public uses of 22(g) lands and only work on these lands, for management reasons, with the permission of the landowner. This relationship does not prevent us and 22(g) landowners from entering into agreements on uses of the 22(g) lands. Such agreements could include payments, or non-monetary compensation for benefits we would obtain from the 22(g) landowner. The final comment recommending implementation of the regulations through Sections 1307 and 1308 of ANILCA is not acceptable to us. While we support these sections of law, the completion of refuge compatibility determinations is a responsibility imposed by law that can only be carried out by the Service. This is not an authority that we can or should delegate outside of the government. KIC and AFN also asked for clarity that if conflicts arise between the implementation of the NWRSA-1997 and ANILCA that ANILCA take

precedence. We address this concern in our discussion of issues pertaining to ANILCA.

Doyon, Limited wrote that the final policy and regulations should recognize that most lands conveyed to Native Corporations pursuant to ANCSA are not subject to the requirements of Section 22(g). We agree that only a small percentage of land conveyed under the provisions of ANCSA is subject to the 22(g) restrictions. The compatibility policy and regulations is not applicable to Native land that is not subject to Section 22(g) of ANCSA.

In summary, we have not changed our position on the general applicability of the compatibility standard to ANCSA 22(g) lands, but we have made numerous changes to the final rule and policy based on public comment as indicated above. These changes allow us to conduct compatibility determinations substantially different on the 22(g) lands in recognition of the unique status of these lands and the fact that we are implementing a provision of a patent.

#### ANILCA

The remaining comments on the proposed rule relative to Alaska address concerns, or needs for clarification, on issues pertaining to ANILCA.

The State of Alaska, the Alaska Professional Hunters Association, The Wildlife Legislative Fund of America, and several Alaska Native organizations all expressed concerns that the legal guidance included in ANILCA on a number of issues was not well presented. It was suggested that the statement in the NWRSA-1997 on resolving any conflicts that arise between implementation of the NWRSA-1997 and ANILCA be included in regulations. In adopting these regulations we have been mindful of this provision and have written them to avoid any conflicts. In addition we are not amending any of the regulations applicable to the Alaska refuges contained in 50 CFR Part 36. Additional statements about specific issues such as cabins, snowmachine use, and access rights ensured under Title XI of ANILCA, etc., are not necessary, as they are provided for in those regulations.

The State of Alaska also expressed concern over possible impacts to State fish and wildlife research, rehabilitation, and enhancement programs, elimination of the option in 50 CFR 25.44 for using mitigation measures to make a right-of-way or easement use of a refuge compatible, and over an inadequate appeal process for not compatible findings where no permit is required (such as for general uses like fishing or boating). These are

not Alaska-specific concerns and other State agencies included them in their comments as well. We addressed them collectively elsewhere in this document.

The State of Alaska, The Wildlife Legislative Fund of America, and the Alaska Professional Hunters Association all commented that Alaska refuges are different from lower 48 refuges in that Alaska refuges are considered open until closed. While there are notable differences for many activities on Alaska refuges compared to the lower 48, all uses of Alaska refuges must also be found to be compatible, unless specifically exempted by law. The policy and regulations describing the compatibility determination process apply equally well to all refuges within the National Wildlife Refuge System. These commenters also recommended that commercial guiding and transporting be allowed as economic uses, and that trapping be allowed as well. We generally allow such uses on Alaska refuges, and there is no proposal to change this; however, from a technical aspect, we must find these uses, as well as all other uses, to be compatible with refuge purposes and the National Wildlife Refuge System mission to allow them. With respect to all of the above comments, we are not changing the status of refuge uses in Alaska. See 50 CFR 36 for regulations governing Alaska refuges.

Doyon, Limited (Doyon) wrote that the proposed regulations fail to clarify that oil and gas recovery can be a compatible use within a refuge, and that activities undertaken pursuant to Section 1008 of ANILCA are subject to a different presumption of compatibility than other uses. All uses, including oil and gas related activities (and even including uses that Congress specifically determined to be "appropriate uses" such as hunting and fishing) must, by law, be determined to be compatible to be allowed. The assumption made by Doyon that oil and gas related activities on non-North Slope refuge lands may be undertaken unless and until a determination is issued which finds the activities not to be compatible, is incorrect. Only after completing a compatibility determination, and having found the proposed use to be compatible, could we proceed in permitting uses pursuant to Section 1008 of ANILCA. Doyon also commented that the draft compatibility policy improperly expands the authority of the Service to impose "additional procedural steps" on Alaska refuges. The additional steps that Doyon is referencing are any of the procedures, or special considerations, that may be specifically required by ANILCA. No

other additional steps are included for conducting compatibility determinations for uses of Alaska refuges, except those that may be mandated by ANILCA, or those previously discussed as they specifically apply to ANCSA 22(g) lands. Additionally, Doyon commented that the proposed regulations could presumptively prohibit new uses for an undetermined amount of time (while completing a final comprehensive conservation plan). We have previously completed these plans, as required by ANILCA, for all Alaska refuges. While we will undertake periodic revisions of these plans, compatibility determinations for proposed new uses will not have to wait for completion of the revisions.

Finally, the Becharof Corporation wrote that unless subsistence use is included as a priority in the language of the policy and regulations, the mission statement will undermine the intent of ANILCA provisions by giving recreational hunting and fishing enhanced consideration. The NWRSA-1997 did recognize hunting and fishing (including subsistence hunting and fishing) as priority public uses that we are to facilitate if we find them to be compatible with refuge purposes and the National Wildlife Refuge System mission. This did not elevate these uses to the status of refuge purposes for which subsistence use is for 15 of the 16 Alaska refuges. Compatibility determinations for these 15 refuges will, by law and regulation, be required to document that uses, including recreational hunting and fishing, do not materially interfere with the ability of the refuges to provide for traditional subsistence uses. This is strong protection for subsistence that the new policy and regulations does not lessen in any way.

In light of the comments related to ANILCA and as discussed in our responses we have made changes to the final rule and policy.

#### *Issue 6: When Is a Compatibility Determination Required*

We received many comment letters addressing various facets of when a compatibility determination is and is not required. The comments focused primarily on two aspects of the policy and regulations: not requiring compatibility determinations for refuge management activities, except for refuge management economic activities; and consider State wildlife management activities as refuge management activities, not refuge uses.

Two hundred and twenty-two individual commenters with a common

shared theme "please modify the draft by requiring all of the Fish and Wildlife Service's management activities to pass the compatibility test," plus several additional commenters recommended that we require compatibility determinations for all refuge management activities. As a general matter, refuge management activities, defined as an "activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission" have not historically been subject to compatibility determinations. We have not in the past and do not now consider refuge management activities to be refuge uses, rather refuge management activities are actions that we are obligated to or decide to take in order to help accomplish refuge purposes and/or the National Wildlife Refuge System mission. We have processes in place, including intra-agency section 7 consultation, refuge planning and associated NEPA compliance, to help ensure that we are conducting the appropriate refuge management activities. In addition, our refuge planning process provides an opportunity for public involvement in refuge management decisions. Compatibility is designed specifically for evaluating the anticipated impacts of refuge uses, not refuge management activities. As we discussed in the preamble of the proposed rule, we acknowledge the unique nature of one category of refuge management activities, that is refuge management economic activities, and for the reasons stated in that preamble we believe that compatibility determinations should be required for this category of refuge management activities. For all other refuge management activities, we are not saying that they are or are not compatible, rather we are simply saying that compatibility does not apply. We believe that this is consistent with the NWRSA-1966.

The International Association of Fish and Wildlife Agencies (International) and several States addressed the importance of distinguishing between "refuge use" and "refuge management activity." Most of these comments requested that we clarify that State wildlife management activities on a refuge are not considered a refuge use and, therefore, not subject to a compatibility determination. The International stated that this is consistent with the NWRSA-1997, and in addition asked that we make this clear in the policy. We agree in part. We added additional language in the policy

stating that, we do not require compatibility determinations for State wildlife management activities on a national wildlife refuge pursuant to a cooperative agreement between the State and the Fish and Wildlife Service where the Service has issued a written determination that such activities support fulfilling the refuge purposes or the System mission. We consider proposals for State activities on refuges that are not pursuant to a cooperative agreement a proposal for a refuge use and we will require a compatibility determination. By law, we cannot allow these activities by the State or any other entity without ensuring that they are compatible. For refuges where the State is proposing a number of wildlife management activities that are not pursuant to a cooperative agreement, we will be able to prepare a single compatibility determination for all the State wildlife management activities.

A few commenters addressed our discussion of circumstances in 2.10 B Other exceptions under which the requirements of compatibility may not be applicable. Commenters suggested we delete portions of this section, add additional examples and add more guidance. We did not accept the recommendation to delete portions of the section because they are necessary to help explain when we should not prepare compatibility determinations. We did not accept the recommendation to add additional examples or to provide more guidance because we did not believe that any clarifying language was necessary.

A few commenters recommended that only military overflights, not all overflights, be exempted from compatibility determinations. The NWRSA-1997 states "The provisions of this Act relating to determinations of the compatibility of a use shall not apply to—(A) overflights above a refuge; \* \* \*" The law does not differentiate between military and non-military overflights. We believe the law exempts all overflights, military or otherwise, from compatibility determinations.

We received several comments regarding the emergency provision that allows us to temporarily allow or initiate any refuge use without making a compatibility determination if it is necessary to protect the health and safety of the public or any fish or wildlife population. We had stated that a temporary action should not exceed 12 months. The general concern was that 12 months was too long to be considered a temporary action. We agree. We have reduced the time frame for temporary actions to not exceed 30 days.

#### *Issue 7: Denying Uses*

We received several comments regarding denying a use without determining compatibility and not permitting a use found to be compatible. The majority of these commenters questioned our authority to take these two actions, *i.e.*, deny a proposed use without making a compatibility determination and not allow a use found to be compatible.

As a matter of law, the Secretary acting through the Service clearly has the authority to permit or not permit any use on a national wildlife refuge, the only legal requirement imposed by the NWRSA-1966 being that those uses permitted must be shown to be compatible. The converse is not true. If an application for a use is denied, it need not be shown that the use is not compatible. In addition, when we determine that a use is compatible, we are not required to allow the use. This authority is not new. We believe this is consistent with the NWRSA-1966 and is clearly stated in the NWRSA-1997 House Report, "Pursuant to Section 4(d) of the NWRSA, a determination of compatibility must be made by the USFWS prior to permitting an activity to occur, but a determination of compatibility does not require that a particular use be permitted. This legislation does not change that provision."

Several of the commenters also addressed the vagueness of the term "is inconsistent" that we use in our discussion of denying a proposed use without determining compatibility. We agree that this term is somewhat vague. We replaced the term "is inconsistent" with the word "conflicts."

#### *Issue 8: Sound Professional Judgment*

We received comments from several non-government organizations regarding our interpretation and discussion of the term "sound professional judgment." In addition, we received comments from several non-government organizations and one State agency regarding our definition of this term. We addressed the comments regarding the definition earlier in this document under Issue 3: Definitions. Following is a discussion of the comments specific to our interpretation and discussion of sound professional judgment.

One commenter suggests that a closer working relationship between the State fish and wildlife agency and the Refuge Manager would improve the application of sound professional judgment. Another commenter agrees with closer working relationships, and suggests that the Refuge Manager consult a much

wider range of professional advice. We agree. When a refuge manager is exercising sound professional judgment, the Refuge Manager will use available information, which could include consulting with others both inside and outside the Service. We added language to that effect in the general discussion of sound professional judgment.

Several commenters said that refuge managers should not consider lack of adequate budgets when considering priority public uses. We do not agree. We believe that we must, by law, consider lack of adequate budgets for all uses, including priority public uses. The NWRSA-1997 states that "no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur." However, regarding this provision in law, the House Report states, "In the future, no such determination is required to be made for wildlife-dependent recreational uses. However, this does not mean that limited financial and personnel resources must be directed toward maintenance or enhancement of these activities. As noted previously, one element of "sound professional judgment" which must be exercised in making a compatibility determination is the availability of resources. This facet of sound professional judgment is intended to allow the manager to consider whether adequate financial, personnel, law enforcement, and infrastructure exists or can be provided in some manner by the USFWS or its partners to properly manage a public use." Regarding the definition of sound professional judgment, the House Report states, "Implicit within this definition is that financial resources, personnel and infrastructure be available to manage permitted activities." Therefore, we believe the available resources element of sound professional judgment is required by law to apply to all uses and must be included in these regulations and policy. Lastly, the NWRSA-1997 goes on to say that if available resources are the only things preventing a priority public use from being compatible, the Refuge Manager must make reasonable efforts to secure resources that are lacking. We address this additional requirement for priority public uses in sections 2.11 A.(2) and 2.12 A.(7) of the policy.

The Wilderness Society, National Audubon Society and National Wildlife Refuge Association suggested we add additional language to the discussion of sound professional judgment regarding maintenance of biological integrity,



diversity, and environmental health. Several additional commenters stated, although in a variety of ways, that we consider biological integrity, diversity, and environmental health when making compatibility determinations and we prohibit uses that are detrimental to any aspect of the ecological health of the refuge. We also received 222 individual letters with a common shared theme stating, "Please also require that activities do not degrade the biological integrity, diversity, and environmental health of the refuges." Since these comments are so closely related we are collectively addressing them as follows. The NWRSIA-1997 states that we must maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System. This is an important and fundamental requirement of the law and establishes a baseline for all actions (including refuge management activities and public uses) taken on refuges. As we discussed earlier in Issue 3: Definitions we did not add this statement to this definition but we recognized its value with regard to analyzing whether a use is compatible with the mission of the System. Because of that we added this concept in the discussion of "materially interfere with or detract from" in section 2.11(B) of our policy and "anticipated impacts of the use" in section 2.12(A)(8) of our policy. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health." One commenter also suggested adding "not negatively impacting conservation goals." We address this comment, in part, in Issue 17: Steps to prepare a compatibility determination where we state that we added to the policy that refuge managers should list all conservation objectives in approved refuge management plans that reasonably might be affected by the proposed use.

#### *Issue 9: Materially Interfere With or Detract From*

We received several comments addressing our discussion of "materially interfere with or detract from." Comments ranged from "the intent of this section, as well as the scope of activities to which it applies, is unclear" to "we find this straightforward and particularly endorse." Other comments stressed the importance of considering direct and indirect impacts of uses plus the cumulative impacts of all activities on the refuge and specifically endorsed other statements in our discussion of "materially interfere with or detract from." One commenter stated that the words "lingering or continued adverse"

confuse more than clarify and should be deleted while another commenter stated that the words "tangible" and "lingering and continued adverse" seem to lower the compatibility standard. As we discuss in Issue 6: Sound professional judgment and Issue 17: Steps to prepare a compatibility determination we made changes that, in part, address some of the comments raised here. In addition, we revised portions of our discussion of "materially interfere with or detract from" to clarify this section. We stress that whether some impact is "tangible" or "lingering and continued adverse" is not necessarily the overriding concern. The primary aspect is how does the use and any impacts from it affect our ability to fulfill the purposes of the refuge and the mission of the System.

#### *Issue 10: Right-of-Ways and Replacement of Lost Habitat Values or Other Compensation*

We received many comment letters that addressed issues related to right-of-ways. These included several general comments, many comments specific to the issue of compensatory mitigation, and the transcript from a public meeting held in Aberdeen, South Dakota that addressed how the proposed regulations and draft policy may affect the Highway 12 project in their state. Twenty-three citizens gave testimony at this October 23, 1999 meeting and each raised concerns about impacts the proposed changes might cause.

The comments we received regarding right-of-ways primarily addressed our proposal to amend current regulations to no longer permit the use of compensatory mitigation in order to make a proposed use compatible. This proposed change was supported by 222 letters from individuals that had a shared common theme regarding this and four additional issues.

The Federal Highway Administration stated "The proposal in the rule and policy to disallow mitigation for uses of refuge land that have not been determined to be compatible may conflict with the laws for Federal land transfer for acquisition of right of way by the FHWA as codified in 23 U.S.C. Section 107(d), Acquisition of Rights-of-Way-Interstate System, and Section 317, Appropriation for Highway Purposes of Lands or in Lands Owned by the United States. These laws establish the process through which the FHWA acquires land on the behalf of State transportation departments from other Federal Agencies for highway improvements and construction." Section 107(d) states "(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or

interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection." Section 317(a) and (b) state "(a) If the Secretary determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate. (b) If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified." It has been the practice of the Service to comply with 23 U.S.C. 107(d) and 317(a) and (b). This rule will change the process by which we prepare compatibility determinations for highway right-of-ways but it will not interfere with our ability to continue to comply with 23 U.S.C. 107(d) and 317(a) and (b). By way of clarification, we are not precluding from the compatibility process all aspects of what is commonly thought of as mitigation. Certainly, any right-of-way applicant, including for roads or highways, could modify a proposed use through avoidance, minimization, and other steps (see discussion of mitigation below.) What we are limiting here is the use of that aspect that is referred to as compensatory mitigation. We still will cooperate by working with the Federal Highway Administration and States for redesign, etc. Another method that we can use to cooperate with the Federal Highway Administration, and, where appropriate, accommodate their request,



is through exchanges for fee title or less than fee title interests in land as provided in our policy at Part 342 Chapter 5 Non-Purchase Acquisitions. The criteria for exchanges are, (1) that the exchange be of benefit to the United States, and (2) that the value of the lands or interests in lands be approximately equal or that values may be equalized by the payment of cash by the grantor or by the United States. Exchanges are a valuable method to acquire land or interests in land for Service programs and may be used to accommodate Federal Highway Administration projects. This rule does not change our policy on land or interests in land exchanges.

We proposed to add, in paragraph (b) of 50 CFR 26.41, language that states we will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation (sometimes referred to as "mitigation" or as a component of mitigation). We also proposed to delete the current paragraph (d) of 50 CFR 25.44, which authorizes us to require "mitigation measures" within an easement area to "make the proposed use compatible" and to delete current paragraph (c) of 50 CFR 29.21-7, as it applies to the issuance of right-of-way permits, which authorizes us to require "mitigation measures" on- or off-site to "make the proposed use compatible."

We want to clarify what is "mitigation" and what portion of "mitigation" we do not allow. The President's Council on Environmental Quality defined the term "mitigation" in the National Environmental Policy Act regulations to include: "(a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments." [40 CFR Part 1508.20(a-e)]. The Service supports this definition of mitigation and considers the specific elements to represent the desirable sequence of steps in the mitigation planning process. When we state in these regulations and policy that we will not allow compensatory mitigation to make a proposed refuge use compatible we are referring only to element (e) of mitigation as defined by the President's Council on Environmental Quality.

Comments were generally either strongly in favor of retaining the existing provisions to allow the continued use of compensatory mitigation, or strongly in favor of our proposal to eliminate those provisions. Support for retaining the existing provisions was largely dominated by three concerns: first, that the proposed changes were too inflexible and could result in many projects that may be considered to be in the general best interest of the American public being delayed, deemed too costly, or prohibited; second, that Congress did not intend for such a far reaching impact in enacting the NWRSA-1997; and third, that such a policy shift would ultimately be bad for wildlife conservation by discouraging State, local government, and private landowner partners, especially in the establishment of new conservation easement areas. Support for the proposed changes generally voiced our view that a use is either compatible or not, and the fact that some "incompatible" impact might be compensated for by doing something to make up for the impacts cannot make a use compatible for purposes of the NWRSA-1966. Some pointed out that it be made clear that compatibility "is not for sale" on national wildlife refuges.

We have spent considerable time reviewing this issue and, based on substantial public comment, believe that some changes in the final policy and regulations are warranted. We understand the Congressional intent regarding existing right-of-ways, which is stated in the House Report, "There are numerous existing rights-of-way on National Wildlife Refuge System lands for roads, oil and gas pipelines, electrical transmission, communication facilities, and other utilities. The Committee does not intend for this Act to in any way change, restrict, or eliminate these existing rights-of-way, whether established by easement or permit, or to grant the USFWS any authority that does not already exist to do so."

We have, therefore, amended and clarified our final policy and regulations to reflect the Committee's intent not to change, restrict, or eliminate existing right-of-ways. The policy and regulations also address the unique circumstance presented by existing public highway right-of-ways. In order to continue to serve the purpose for which a right-of-way was issued, public highways must, in certain circumstances, be expanded or realigned. We amended our policy and regulations to accommodate the

reasonable need for the minor expansion or realignment of existing public highway right-of-ways. We note that while the Congressional intent is that the Act itself not change, restrict, or eliminate existing right-of-ways, it is also clear that Congress did not alter our authority to do so if warranted on compatibility or other grounds.

#### *Issue 11: Refuge-Specific Analysis*

We received several comment letters that generally supported our refuge-specific analysis language in the policy. One commenter recommended adding specific language from our proposed rule preamble to our policy discussion on refuge-specific analysis. They stated this would give added clear and appropriate policy direction to refuge managers. We agree. Therefore, we modified this section to state that we do not require refuge managers to independently generate data to make determinations, but rather to work with available information. The Refuge Manager may work at their discretion with the proponent(s) of the use or other interested parties to gather additional information before making the determination.

#### *Issue 12: Relationship to Management Plans*

We received several comment letters that addressed the relationship between compatibility determinations and refuge planning. These comments supported completing compatibility determinations as part of the comprehensive conservation planning process. They stated that this was one way to better address the impacts of the use and reduce unnecessary or duplicative paperwork. We agree that there are many advantages to preparing compatibility determinations concurrently with refuge planning documents, and in the policy we state that we will usually complete compatibility determinations as part of a planning process. In addition, our final refuge planning policy published in the **Federal Register** (65 FR 33892 published May 25, 2000) states we will, "Complete new compatibility determinations or re-evaluate existing compatibility determinations as part of the CCP process for all individual uses, specific use programs, or groups of related uses associated with the proposed action. Prepared concurrently with the CCP, incorporate the draft compatibility determinations into the draft CCP as an appendix. We require public review and comment for all compatibility determinations. We can achieve this concurrently through

public review and comment of the draft CCP and NEPA document.”

Three State fish and wildlife agencies and the International Association of Fish and Wildlife Agencies, suggested adding to the rule Congressional intent that compatibility determinations be made, to the extent practicable, as part of the comprehensive conservation plan. We agree that this should be stated in the rule as well as in the policy. Therefore, we added language to the regulations that states we will usually complete compatibility determinations as part of the comprehensive conservation plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan.

### *Issue 13: Priority Uses*

We received several comments from non-government organizations and State agencies regarding priority uses, or special considerations when managing conflict between uses. The NWRSA–1997 established that compatible wildlife-dependent recreational uses, defined as refuge uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation, are to be recognized as the priority general public uses of the National Wildlife Refuge System through which the American public can develop an appreciation for fish and wildlife. The law further requires that opportunities are to be provided for compatible wildlife-dependent recreational uses within the National Wildlife Refuge System, that these uses receive priority consideration over other general public uses in planning and management within the National Wildlife Refuge System, and for increased opportunities for families to engage in such activities within the National Wildlife Refuge System. The law did not establish a hierarchy among the priority public uses, or establish any clear process for determining such a hierarchy. The law was clear, however, that we must determine the priority public uses to be compatible if we are to allow them, and if determined compatible, we should facilitate them whenever possible.

Some commenters expressed concern that the proposed policy would provide guidance to refuge managers that would allow them to find a priority public use not compatible based solely on insufficient information on the effects of the use. They suggested that Congressional intent directed that priority public uses should be determined compatible unless strong evidence demonstrated otherwise. We agree that Congressional intent provided

that compatible priority public uses should be facilitated whenever possible, but it is clear that no different standard is to be applied to the actual determination of compatibility. Nonetheless, we acknowledge that there is rarely complete information available on the effects of a proposed use, and that the proposed terminology, “If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use” could be improved. Therefore, we have added to the final policy a discussion of how we deal with priority public uses when sufficient information is not available. We believe that this change clarifies this issue, provides adequate priority to the priority public uses, and addresses the comments.

Several commenters also expressed concern with the Justification step in policy and regulations, suggesting we eliminate the language, amend it to exempt priority public uses or amend it to ensure that only those uses which are determined to be compatible will materially enhance the refuge purposes and System mission. The language, as part of a justification for the compatibility finding, would require a description of how the proposed use is reasonably expected to affect fulfilling the refuge’s purpose(s) and the National Wildlife Refuge System mission. Most of these comments correctly pointed out that the compatibility standard measures how the proposed use would materially interfere with or detract from the fulfillment of the refuge’s purposes or the National Wildlife Refuge System mission. Therefore, we amended this step in regulations and policy to clarify this point.

A number of commenters asked for clarification on how we would determine which use, among priority public uses, would receive the higher priority should conflict between them arise.

Suggestions were also made by some on how such priority decisions should be made, such as the Humane Society of the United States suggesting that consumptive wildlife uses (such as hunting and fishing) be held to a higher standard than non-consumptive wildlife uses (such as wildlife viewing and photography), while the New Mexico Department of Game and Fish requested that we give priority to waterfowl hunting (specifically to manage increasing populations of white geese) over the optimization of waterfowl viewing opportunities. The NWRSA–

1997 did not establish a hierarchy among the priority public uses, and we are not proposing to do so as a matter of general policy. We will continue to try and facilitate all compatible priority public uses to the degree that we are able to do so. If conflicts arise, and restrictions or the elimination of uses are necessary, we will give priority to uses that most positively contribute to the achievement of refuge purposes, the National Wildlife Refuge System mission, and specific refuge management goals.

Two scientific organizations (American Institute of Biological Sciences and The Ornithological Council) suggested that scientific research should be presumed to be compatible unless otherwise determined that it is not, and such activities should be considered in the “top tier of uses.” While our experience has been that scientific research and other scientific activities are most often compatible, the NWRSA–1966 as amended by the NWRSA–1997 does not give us any authority to treat research differently than other uses. Nonetheless, we encourage many types of natural resource-related research and believe that we can cover many such proposed uses under our expedited compatibility review process.

Many commenters voiced support for the priority public uses, either as a category, or individually. Some expressed concern that more was not stated in the draft documents that illustrated the preference that we must give to wildlife-dependent recreational uses under the provisions of the NWRSA–1997. The State of Utah voiced support for our position on priority public uses but was concerned that regulations (specific to hunting) were not uniformly used on all refuges in their area. We understand this concern, and support consistency in general, but maintain that different regulations, or permit stipulations, are often necessary to ensure compatibility at different refuges because of different wildlife management issues, refuge purposes, size of the refuge, or other refuge-specific differences.

The Wilderness Society suggested that we prohibit non-priority recreational activities, and commercial uses of refuges unless they can be demonstrated to contribute to the achievement of the National Wildlife Refuge System mission and the refuge purposes, and that they are compatible. While we believe such a policy could ultimately benefit refuges, the suggestion goes beyond both what the NWRSA–1997 mandates and the general scope of the policy and regulations establishing the

process we will use to determine compatibility of uses.

Several comments suggested that hunting or fishing guides or commercial outfitters, and/or trapping, should be considered priority public uses under the provisions of the NWRSA-1997. We do not agree. The definition for the priority public uses is clearly provided in the law, and although these are related uses, they are not specifically included in the legal definitions. The most obvious effect beyond these uses not receiving automatic preference over other refuge uses, is the requirement to review compatibility determinations for these uses every 10 years rather than every 15 years. Our interpretation of priority public use only includes the use itself and not uses that are related but separate from the actual use. Another example is that a permitted use that rents boats (that could be used in support of fishing, birdwatching, or waterfowl hunting) would not be considered a priority public use itself in our policy and regulations. We consider it a commercial use subject to the 10 year compatibility review requirement.

#### *Issue 14: Re-evaluation of Uses*

We received several comment letters regarding how and when we re-evaluate uses for compatibility. The majority of the commenters recommended we clarify our re-evaluation language. A few of the commenters recommended specific changes.

One commenter recommended reducing the 10- and 15-year maximum re-evaluation period to 5-years for recreational uses. Most of the re-evaluation language in the policy and regulations is taken directly from the NWRSA-1997. These 10- and 15-year maximum time frames coupled with the other criteria for re-evaluations in our policy and regulations are consistent with the NWRSA-1997, which provided clear direction on when we will re-evaluate uses for compatibility. We believe that the re-evaluation criteria are sufficient to keep pace with changes in resources and relevant information. The 10- and 15-year re-evaluation criteria is the maximum period of time we can go without a re-evaluation whereas the other criteria may trigger a re-evaluation much earlier. In addition, we note that a refuge manager may re-evaluate a use at any time and specifically state this in our policy.

One commenter recommended we re-evaluate a priority public use whenever it is proposed, even if it has been previously denied. We consider requests for refuge uses whenever we receive them. For priority public uses we

aggressively look for ways to allow them. The House Report states we should facilitate priority public uses when they are determined to be compatible and also states that, "there will be occasions when, based on sound professional judgment, the manager will determine that such uses will be found to be incompatible and cannot be authorized." During fiscal year 1999 we welcomed over 33 million priority public use visits to the National Wildlife Refuge System. However, this does not mean that we should allow all priority public uses on all refuges. We agree that priority public uses is a category of uses that we must pay special attention to as directed by the NWRSA-1997. We believe that we adequately address this special category of uses throughout the policy and do not need to make changes to the re-evaluation section. See Issue 13: Priority uses for more discussion on this topic.

Four commenters, including Edison Electric Institute, Transcontinental Gas Pipe Line Company, Southern Natural Gas Company and El Paso Energy Corporation, specifically addressed our re-evaluation procedures for right-of-ways. Generally, these commenters asked that we further clarify how re-evaluations will be conducted for right-of-ways. We are addressing existing right-of-ways very differently from other types of refuge uses. We have amended and clarified the final policy and regulations to reflect the Congressional intent as stated in the House Report that this law not in and of itself change, restrict, or eliminate existing right-of-ways. We discuss this issue earlier in this document under Issue 10: Right-of-ways and replacement of lost habitat values or other compensation. The commenters also asked us to clarify certain elements of a compatibility determination for re-authorizing an existing right-of-way. They recommended we consider the right-of-way re-authorization based on existing conditions rather than pre-right-of-way conditions. We agree and have amended the regulations and policy to clarify this point.

One commenter acknowledged that the NWRSA-1997 directs that re-evaluations of uses specifically authorized for a period of longer than 10 years (such as right-of-ways), will examine compliance with the terms and conditions of the authorization, not the authorization itself. They went on to reference a colloquy held between Senator John Chafee, Chairman of the Environment and Public Works Committee, and Senator Bob Graham on September 10, 1997 during passage of the NWRSA-1997 on the Senate floor.

In that exchange, Senator Graham states that: "[I]n the case of unforeseen changes in circumstances, it may occasionally be necessary to adjust a use to ensure that it remains compatible. My understanding is that utility companies have been willing and able to make minor adjustments to their facilities to ensure that they remain compatible. Mr. Chairman, am I correct to understand that this amendment will still allow the flexibility to make such adjustments to facilities that have been authorized for more than 10 years in order to ensure that they remain compatible?" At which point, Senator Chafee responds: "That is correct." (Catalogued in Congressional Record of September 11, 1997, Page: S9238). Based on this conversation the commenter recommended we modify our regulations and policy to allow the Service to seek modifications to the terms and conditions of permits with a duration exceeding 10 years, if necessary to ensure that the use remains compatible. We agree and have amended the regulations and policy to clarify this point.

One commenter was concerned that we might go beyond our authority when we examine compliance with the terms and conditions of a right-of-way authorization and when we make a new compatibility determination prior to re-authorizing a right-of-way. We have always limited these actions to the extent of our authority to regulate and control the right-of-way. These regulations and policy do not change that authority.

Several commenters suggested that we clarify certain aspects of the re-evaluation language. In particular, we were asked to clarify whether a compatibility re-evaluation is a full blown compatibility determination or something else. We have clarified this in both the policy and regulations. When we re-evaluate a use for compatibility, we will prepare a new compatibility determination following the procedure outlined in policy. For some uses, there may be no significant change in the conditions under which the use is permitted or no significant new information regarding the effects of the use; however, whenever a re-evaluation is triggered we will take a fresh look at the use and complete a new compatibility determination.

Two commenters suggested we clarify how we determine significant change in the conditions under which the use is permitted or significant new information regarding the effects of a use. They also asked that we clarify how new information may be made available to the Refuge Manager. We added language to the policy to clarify this

point. The Refuge Manager will determine whether change in the conditions under which the use is permitted or new information regarding the effects of the use is significant or not. The Refuge Manager will make this decision by considering whether these new conditions or new information could reasonably be expected to change the outcome of the compatibility determination. Any person at any time may provide information regarding changes in conditions and new information to the Refuge Manager. However, the Refuge Manager maintains full authority to determine if this information is or is not sufficient to trigger a re-evaluation.

#### *Issue 15: Public Review and Comment*

We received many comment letters regarding the public review and comment portion of the compatibility determination process. Generally, these comments supported this section and requested changes to the following areas: length of the public review and comment period; mechanism by which we seek public review and comment; involvement of State fish and wildlife agencies; level of detail; and types of uses we consider under the expedited compatibility determination process. A few of the commenters complimented our commitment to "actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use."

As we discussed in Issue 12: Relationship to management plans we will usually complete compatibility determinations as part of a planning process and we will achieve public review and comment on our compatibility determinations concurrently through public review and comment of the draft plans and NEPA documents. Our refuge planning policy provides a detailed discussion of how we will provide for substantial public involvement throughout the planning process from start to finish. We did not repeat those details in this policy. For compatibility determinations prepared separately from a plan we believe that we have adequately described the public review and comment process and that additional detail is not needed.

Several of the commenters were particularly concerned about the Refuge Manager's ability to reduce the comment period for uses other than minor, incidental, or one-time uses that will likely have no detrimental effect on refuge purposes or the System mission. In response to those comments, we deleted the following: "This period may be reduced by the Refuge Manager when

there is not sufficient time to provide the full 14-days."

A few of the commenters suggested we consider specific categories of uses such as priority general public uses and electric utility right-of-ways, and minimal impact activities under the expedited compatibility determination process. We agree, in part, with the comments to include minimal impact activities under the expedited process and we adequately addressed this in the draft policy and further clarification is not needed. We did not accept the recommendations to include specific categories of uses, such as priority general public uses and electric utility right-of-ways, under the expedited process.

We addressed the concerns of the States to be more involved in compatibility determinations in Issue 16: State Involvement.

#### *Issue 16: State Involvement*

Thirteen States and one non-government organization addressed a State's need to be involved in compatibility determinations. Comments ranged from offering to assist refuge managers with compatibility determinations to requiring State consultation on all compatibility determinations. Although the range of the comments varied considerably, the topic that most frequently came up was the desire of the States to be involved in the compatibility determination process. The majority of these comments also made reference to the importance of completing compatibility determinations during the comprehensive conservation planning process.

The International Association of Fish and Wildlife Agencies, representing all 50 State fish and wildlife agencies, stated that we should reiterate Congressional intent in the NWRSA—1997 that "compatibility determinations be made, to the extent practicable, as part of the CCP." We agree. We addressed this concern under Issue 12: Relationship to management plans. We believe the relationship between compatibility and comprehensive conservation planning accommodates the desire of the States to be involved in the compatibility determination process. The States will be invited to participate in the comprehensive conservation planning process. We will complete most compatibility determinations concurrently with a comprehensive conservation plan. Therefore, the States will be involved in compatibility determinations early in the process. Because of the close relationship between compatibility and

comprehensive conservation planning, and the States' active role on the planning team, we do not need to add an additional step for State involvement in these regulations and policy.

#### *Issue 17: Steps To Prepare a Compatibility Determination*

We received many comments that addressed issues on the steps we propose to use in completing compatibility determinations. We have addressed comments on steps related to the determination of available resources (see Issue 8: Sound professional judgment), opportunity for public review and comment (see Issue 15: Public review and comment), preparing the justification for the finding (see Issue 13: Priority uses), and consultation by the Refuge Manager with their Regional Office Supervisor (see Issue 4: Decision making authority and appeal process), elsewhere in this document. Other comments related to the procedural steps we propose to take include: anticipated impacts of the use, description of the use, stipulations, finding of whether a use is compatible or not, and general comments about the proposed compatibility determination process.

Several commenters suggested that further guidance is needed in the policy to ensure that the assessment of anticipated impacts fully captures the extent to which a use detracts from refuge purposes or the National Wildlife Refuge System mission. The National Audubon Society suggested that the compatibility determination should list all relevant refuge conservation objectives. We agree, that where specific management objectives have been adopted through the public planning process, and those objectives clearly support the refuge's ability to fulfill its purposes, steps in the compatibility review process should acknowledge and evaluate how the proposed use would impact those specific refuge management objectives. Therefore, we have amended the policy to include this recommendation.

An individual wrote that refuge managers should have to take into account the impacts to wildlife in not continuing a use. We agree that this is inherent in the review process, that both positive and negative impacts to refuge resources must be evaluated in determining the net effect on the ability of the refuge to achieve its purposes. We did not believe that any clarifying language was necessary, however, on this issue. The Wildlife Legislative Fund of America stated that it was critical that the policy not invite or encourage refuge managers to speculate about possible or

potential problems that could arise, and that they are opposed to management decisions based on conjecture and speculation. We agree in part, and have addressed this potential concern in the discussion of sound professional judgment. We have also made changes to the language affecting the decision process when insufficient information is available to make a decision regarding a priority public use. See Issue 13: Priority uses for more discussion on this topic. We did not change the policy relative to the recommendations received from the Animal Protection Institute that would add steps to the anticipated impacts section to address specifically what effects the use might have on threatened and endangered species or on "non-target" wildlife because we believe that the step already required analysis of impacts of the use to all species of wildlife. The National Wildlife Refuge Association requested we amend the section to include language that directs refuge managers to review all associated activities to the use (such as mode of transportation or special equipment that may be required for the intended use). We agree with the concept and believe that we have addressed this issue in the policy at section 2.9 When is a compatibility determination required?. In addition, we added language to section 2.12 What information do we include in a compatibility determination? to further clarify this point.

A suggestion to add steps for the description of use that would describe what time frame the use would be conducted, and what is the purpose of the use, were not incorporated in that we believe we already included these issues in the step, without adding the clarifying language. Similarly, we did not amend the policy, as suggested, to identify whether the use "and all associated uses are" compatible or not compatible because we believe that the additional language was not necessary to clarify that we are talking about the use in its entirety (including supporting uses and facilities) as described in detail earlier in the process. However, we added language referring to associated facilities, structures and improvements to the steps where we identify and describe the use. We had already stated in the policy that whenever practicable, the Refuge Manager, should concurrently consider related uses or uses that are likely to have similar effects in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment. The Refuge Manager will determine whether to consider a use

individually, a specific use program, or in conjunction with a group of related uses.

The Edison Electric Institute, representing approximately 200 electric utility members, and other commenters, asked that we clarify the difference between the term "stipulations" under the proposed steps for making a compatibility determination, and the term "mitigation." Stipulations generally establish the controlling parameters of a use. For example: no right-of-way mowing during the period March 15 to July 15; restore disturbed area with native vegetation; within the areas marked by public use signs; by no more than 45 people at one time; at speeds not to exceed 15 mph. While these might "mitigate" the effects of a use they are more correctly stated as "stipulations" for the use to be compatible. Mitigation often gives rise to the thought that one could compensate for impacts rather than avoid. In addition, we have added the term "sufficient" to the policy as requested by the National Wildlife Refuge Association.

The Safari Club International expressed concern with the proposed changes to 50 CFR 26.41 which requires information "whether the use is compatible or not compatible \* \* \*". They felt that this was not adequate and should also require the inclusion of an explanation of the reasoning used in reaching that determination. We agree that this is not enough alone; however, steps in the compatibility determination process also require the inclusion of the anticipated impacts of the use on the refuge's purposes and the National Wildlife Refuge System mission in regulations and a justification for the determination in policy. We believe that this will provide for adequate rationale for the decision being made.

The National Audubon Society requested that a step be added to determine if a use is an "appropriate use" and if it was determined not to be, that the use be denied without determining compatibility. We have listed seven reasons that we would deny a use without determining compatibility. While we did not define any of these steps as a determination of appropriateness, all seven steps serve that function, in part. We do, however, agree that we should give additional scrutiny to the question of what are appropriate uses of national wildlife refuges but that this issue goes beyond the question of compatibility covered in these regulations and policy. We will likely address this issue in future regulations and policy. The National Audubon Society also suggested

changes that would have us add language addressing indirect impacts of the proposed use on the time, space, or funding available to implement conservation objectives, and would encourage refuge managers to work with any interested party to gather information, and should make an effort to balance data gathering among proponents and opponents of a proposed use. We agree that indirect impacts of a proposed use may include taking away or diverting resources from an activity that would support fulfilling the System mission or refuge purposes and therefore would be a factor in determining whether the proposed use is compatible or not. We added a statement to this effect although we did not use the exact wording provided by the National Audubon Society. Their recommendation to work with all interested parties is encouraged, and we believe that adequate guidance on this issue is included in the rule; however, we do not support the view that information must somehow be balanced among perceived opponents or proponents of a use. We will seek all pertinent information from all interested parties.

We have included a step to the compatibility determination process that would identify whether the use is a priority public use or not based upon a recommendation from the Wildlife Legislative Fund of America. Because of the clear focus on this issue in the NWRSIA-1997, we felt it was warranted to highlight such uses in our compatibility determination process.

#### *Issue 18: Existing Uses Determined To Be Not Compatible*

We received several comments regarding what we do with existing uses that are not compatible. The comments ranged from opposed to the provision to need for clarification to strongly supportive of the provision. The NWRSIA-1997 directs us to "provide for the elimination or modification of any use as expeditiously as practicable after a determination is made that the use is not a compatible use" in the regulations. In the proposed regulations and draft policy we stated that existing uses determined to be not compatible would be terminated or modified to make them compatible as expeditiously as practicable. In the final regulations and policy, we maintained what we had already proposed and added a statement that says, except with written authorization from the Director, the process for termination or modification will not exceed 6 months from the date that the compatibility determination is signed.

### *Issue 19: Pre-acquisition Compatibility Determinations*

Several commenters addressed the type of uses for which we should prepare pre-acquisition compatibility determinations and one commenter addressed who should make the compatibility determination.

Three commenters recommended that we prepare pre-acquisition compatibility determinations for all existing uses. One commenter supported the language in our draft policy and regulations, and said we should clarify that existing wildlife-dependent recreational public uses do not include private uses. One commenter recommended clarifying what public means. With regard to pre-acquisition compatibility determinations, the NWRSA-1997 states "on lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses \* \* \*". It is clear that this provision of the law does not apply to uses other than wildlife-dependent recreational uses. In addition, the law specifically refers to "compatible wildlife-dependent recreational uses" as the "priority general public uses of the System." In the context of pre-acquisition compatibility determinations, we believe that Congress was referring to existing wildlife-dependent recreational public uses rather than existing wildlife-dependent recreational private uses. In order to make this distinction in policy and regulations, we used the word "public" in our discussion of pre-acquisition compatibility determinations. We do not believe that we need further clarification in the policy and regulations.

One commenter recommended that the planning team make pre-acquisition compatibility determinations. As discussed elsewhere in this document under Issue 4: Decision making authority and appeal process, we believe that the Refuge Manager is the most appropriate and qualified person to make all compatibility determinations, including pre-acquisition compatibility determinations.

### *Issue 20: NEPA*

We received several comment letters regarding the National Environmental Policy Act (NEPA) and how it relates to compatibility. Generally, the comments addressed the need to follow the NEPA

process when completing compatibility determinations.

NEPA requires us to examine the environmental impact of our actions, incorporate environmental information, and utilize public participation, as appropriate, in the planning and implementation of our actions. NEPA compliance is required whenever we take an action. It is the action that triggers NEPA. A compatibility determination is not an action under NEPA, rather it is only one of many factors that we take into account whenever we consider taking an action, *i.e.*, allowing a refuge use. Comprehensive conservation plans and step-down management plans include our decisions about allowing or not allowing refuge uses. These plans will have associated NEPA compliance documentation. As we discussed under Issue 12: Relationship to management plans, we will complete many compatibility determinations concurrently with a planning process. Compatibility determinations are an integral part of our decision about refuge uses; however, it is important to note that compatibility is only one of many factors that we take into account when we consider allowing or not allowing a refuge use. We revised the language to clarify the relationship between NEPA and compatibility.

### *Issue 21: Policy and Regulations*

Two commenters discussed the need to provide more detail in the regulations. They were surprised that we decided to prepare separate regulations and policy documents to implement this provision of the law. They were concerned that a number of the important provisions in the policy document are missing entirely from the regulations. The NWRSA-1997 requires that we issue final regulations establishing the compatibility determination process. We have accomplished that directive with these final regulations. In addition to regulations in the Code of Federal Regulations (CFR), we chose to concurrently develop more detailed guidance for preparing compatibility determinations in the Fish and Wildlife Service Manual. The compatibility chapter in the Service Manual contains a mix of rules that we must follow as well as general guidance. Publishing compatibility rules in the Service Manual does not diminish the requirements that they contain. Refuge Managers will be bound by those requirements that are mandatory whether or not we publish them in the CFR. In addition, because the compatibility chapter of the policy

manual contains rules, we will have to use the same notice and comment procedure utilized to adopt this chapter if we decide to amend or change it. Publishing in the Service Manual rather than the CFR does not affect the strength of any rules that are in the chapter nor does it exempt us from procedural requirements.

### *Issue 22: Wilderness*

One commenter was pleased that we discussed the importance of preserving wilderness and recommended we add "Unless specifically authorized under the Act establishing the wilderness area, the construction of roads or permanent structures, and the use of motorized equipment or mechanized vehicles is prohibited within wilderness areas unless necessary to preserve the area's wilderness characteristics." We state in the policy that for uses proposed for wilderness areas we must first analyze whether the use can be allowed under the terms of the Wilderness Act before we determine if the use is compatible. We also state that if the use can be allowed under the Wilderness Act we must then determine if the use is compatible. This compatibility determination will include the purposes of the Wilderness Act, which makes such purposes supplemental to those of the refuge. We believe the recommended additional language goes beyond the question of compatibility covered in these regulations and policy and will be more appropriate in our future wilderness policy.

### *Issue 23: Economic Uses*

We received a few comments addressing economic uses of refuges. Comments ranged from encouraging economic uses to defining certain economic uses as allowed uses to not allowing economic uses unless they contribute towards achieving refuge purposes and the System mission and do not degrade the biological integrity, diversity and environmental health of the refuge. We already said in the proposed rule that we may allow economic uses when they may contribute to the "administration" of the refuge. "Administration" of the refuge was intended to mean achieving refuge purposes and the System mission. Therefore, to clarify what we mean we accept the recommendation to replace administration of the refuge with achievement of the refuge purposes and System mission. In the process of addressing comments we decided that section 29.3 refers to the term "nonprogram uses" which is a term no longer applicable to the way we currently manage the National Wildlife

Refuge System. Section 29.3 provides no additional information beyond what we provide in section 25.21; therefore, we removed section 29.3.

#### *Issue 24: Allowing a Use*

We received a few comments addressing the relationship between compatibility and actually allowing a use. The commenters stated that “the relationship of compatibility and refuge special use permits is not clear,” “compatibility determinations and permitting should be separate but linked processes” and “we have concerns that there is no specific connection between a “compatible” compatibility finding and the granting of an actual permit to conduct the activity.” We state in the regulations that we may open an area by regulation, individual permit, or public notice, in accordance with 50 CFR 25.31 and we may open an area only after we determine that the use is a compatible use. We may open refuges by a number of methods. Depending on the type of allowed use, the Refuge Manager has several ways to open a specific refuge. For example, to open a refuge to hunting, we revise a list of refuges allowing hunting found at 50 CFR part 32, to open a refuge to wildlife observation we may do so by posting a sign at an appropriate location and to open a refuge for a specific research project we may do so by issuing a special use permit. This is not new. Compatibility determinations are an integral part of our decision about refuge uses; however, it is important to note that compatibility is only one of many factors that we take into account when we consider allowing or not allowing a refuge use. We do not believe that any additional language is necessary to clarify this issue.

#### *Issue 25: Public Safety*

One commenter recommended we add “and not inconsistent with public safety” in section 26.41 of the regulations and in section 2.3 of the policy. The commenter pointed out that this term was used in the NWRSA–1997 and should be used in these regulations and policy. We recognize that the NWRSA–1997 includes this directive, but have included it separate from compatibility. Deciding whether a proposed use is “not inconsistent with public safety” is an issue we take into consideration before we prepare a compatibility determination. In the policy at 2.10 D we list a number of situations, including “inconsistent with public safety,” when a refuge manager would deny a proposed use without determining compatibility.

#### *Issue 26: Support Letters*

We received many comments that stated support for a specific organization’s comments. They were: one Native Village Corporation supported the Alaska Federation of Natives comments; one non-government organization supported the Animal Protection Institute’s comments; one non-government organization supported the National Audubon Society’s comments; one individual supported the Wilderness Society’s comments; eight non-government organizations supported the Conservation Force’s comments; and 18 non-government organizations supported the National Wildlife Refuge Association’s comments.

We considered these letters of endorsement at the same time we considered the information included in the organization’s comments that they endorse. Since these letters of endorsement did not include new or additional information, we did not respond to them individually. For example, when we considered the issues included in the Conservation Force’s comments, we took into account that eight conservation organizations endorsed their comments. Likewise, when we considered the issues included in the National Wildlife Refuge Association’s comments, we took into account that 18 Friends Groups, who support local national wildlife refuges, formally endorsed their comments.

#### *Issue 27: Extend Public Comment Period*

We published the proposed rule (64 FR 49056) and draft policy (64 FR 49067) in the **Federal Register** on September 9, 1999. We invited the public to provide comments on the proposed rule and draft policy by November 8, 1999. During this 60-day comment period, we received 12 written requests for an extension to the comment period. In order to ensure that the public had an adequate opportunity to review and comment on the proposed rule and draft policy, we extended the comment period to December 8, 1999 (64 FR 62163 published November 16, 1999). Therefore, the proposed rule and draft policy were available for public review and comment for 90 days.

#### *Issue 28: Unrelated Comments*

We received many comment letters that did not include information relevant to the proposed rule and draft policy under review. Generally, these comments either voiced support for the Highway 12 project in South Dakota or voiced opinions about the appropriateness of hunting and trapping

on national wildlife refuges. These comments did not contain information that we could use to improve the proposed rule and draft policy.

#### *Revisions to the Proposed Rule*

We considered all of the information and recommendations for improvement included in the comments we received during the 90-day public review and comment period. We made changes to the proposed rule and draft policy as discussed in the “Summary of Comments Received” section of this document. The following represents a summary of the significant revisions made to the proposed rule and draft policy.

(1) In the proposed regulations and draft policy we stated that lands subject to the patent restrictions imposed by Section 22(g) of ANCSA are subject to the compatibility standard. In the final regulations (25.21(b)) and final policy (2.8(C)) we have provided more detail on how this will be implemented. These changes allow us to conduct compatibility determinations differently with regard to the ANCSA 22(g) lands in recognition of the unique status of these lands.

(2) In the proposed regulations and draft policy we stated that we will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensation. In the final regulations (26.41(b) and (c)) and final policy (2.11(C) and (D)) we maintain this requirement with one exception. We will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensatory mitigation, except for maintenance of an existing right-of-way including minor expansions or minor realignments to meet safety standards. This change provides a workable mechanism for dealing with previously approved right-of-ways.

(3) In the proposed regulations and draft policy we stated that prior to approving each compatibility determination, the Refuge Manager will consult with the regional office supervisor. In the final regulations (26.41(a)(14)) and final policy (2.12(A)(14)) we changed the required regional office consultation to a required regional office concurrence on all compatibility determinations. This change will help ensure that we look at both large-scale (System mission) and local-scale (refuge purposes) issues when preparing compatibility determinations.

(4) In the proposed regulations and draft policy we stated that the Refuge Manager may temporarily suspend, allow, or initiate any use in a refuge if



necessary to immediately act in order to protect the health and safety of the public or any fish or wildlife population. We stated in the draft policy that these temporary actions should not exceed 12 months. In the final policy (2.10(C)) we reduced the time frame for these temporary actions to not exceed 30 days.

(5) In the proposed regulations and draft policy we stated that we would re-evaluate compatibility determinations for existing uses whenever any one of a number of criteria was met. In the final regulations (25.21(f), (g), (h) and (i)) and final policy (2.11(H)) we added significant detail to clarify certain aspects of how and when we would re-evaluate compatibility determinations. Among other clarifying language we added the following: Whenever a re-evaluation is triggered we will take a fresh look at the use and complete a new compatibility determination following the procedure outlined in the regulations and policy; whenever we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective; for uses in existence on the effective date of these regulations that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself, however, the Service will request modifications to the terms and conditions of the permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible; and after the effective date of these regulations no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for the modifications to the terms and conditions, if necessary to ensure compatibility.

#### Required Determinations

##### *Regulatory Planning and Review (E.O. 12866)*

The final rule was reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis for a new approach is provided in (4) below. This rule is administrative, legal, technical, and

procedural in nature. This rule establishes the process for determining the compatibility of proposed national wildlife refuge uses as well as the procedures for documentation and periodic review of existing uses. We have been making compatibility determinations since passage of the NWRSA—1966 in 1966. The NWRSA—1997, passed in 1997, does not greatly change the compatibility standards so we expect these procedures to cause only minor modifications to existing national wildlife refuge public use programs. We expect a small increase, up to 5 percent, in the amount of public use activities allowed on refuges as a result of this rule.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. We estimated total annual willingness to pay for all recreation at national wildlife refuges to be \$372.5 million in Fiscal Year 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). We expect the compatibility determination process implemented in this rule to cause at most a 5 percent increase in recreational use system-wide. This does not mean that every refuge will have the same increase in public use. Only refuges where increases in hunting, fishing, and non-consumptive visitation are compatible will we allow the increases. Across the entire National Wildlife Refuge System we expect an increase in hunting, fishing, and non-consumptive visitation to amount to no more than a 5 percent overall increase. If the full 5 percent increase in public use were to occur at national wildlife refuges, this would translate to a maximum additional willingness to pay of \$21 million (1999 dollars) annually for the public. However, we expect the real benefit to be less than \$21 million because we expect the final increase in public use to be smaller than 5 percent.

Furthermore, if the public substitutes non-refuge recreation sites for refuges, then we would subtract the loss of benefit attributed to non-refuge sites from the \$21 million estimate.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change, *i.e.*, the cost of using the next best production option if we discontinue production using the national wildlife refuge. National wildlife refuges use grazing, haying, timber harvesting, and

row crops to help fulfill the National Wildlife Refuge System mission and national wildlife refuge purposes. Congress authorizes us to allow economic activities of national wildlife refuges, and we do allow some. But, for all practical purposes, we invite (almost 100 percent) the economic activities to help achieve a national wildlife refuge purpose or National Wildlife Refuge System mission. For example, we do not allow farming *per se*, rather we invite a farmer to farm on the national wildlife refuge under a Cooperative Farming Agreement to achieve a national wildlife refuge purpose. Compatibility applies to these economic activities, and this rule likely will have minor changes in the amounts of these activities occurring on national wildlife refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on national wildlife refuges is not available.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the rule pertains solely to management of national wildlife refuges by the Service.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other Federal assistance programs are associated with public use of national wildlife refuges.

(4) This rule does not raise novel legal or policy issues; however, it does provide a new approach. This rule is significant because of this reason. This rule continues the practice of requiring public use of national wildlife refuges to be compatible. It adds the NWRSA—1997 provisions that ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public. A benefit/cost assessment of the implementation of this rule follows.

Baseline for analysis—A “with” and “without” this rule format is used to determine the impact of implementing this rule on activities engaged in by the public on national wildlife refuge lands. The impact on the public of refuge visitation rates translated into public benefits for all wildlife-related and other activities that were determined compatible “without” this rule is the proper economic baseline. The Refuge Management Information System data on public visitation for the System for fiscal year 1999 was used to determine the level of baseline wildlife-related



activities. Non-wildlife related activities on refuges such as research and crop production are not estimated in the baseline but their effect on compatibility planning cycles is included in the cost estimate of this rule.

Benefits from implementing this rule—As was estimated under (1) above, it is expected that a maximum of \$21 million annually in additional consumer surplus will be attributable to this rulemaking. This is a System-wide estimate of the increase in consumer surplus and covers all public activities on System lands.

Costs of implementing this rule—There are two components of cost that are relevant to this rulemaking action. They are the changes in the allocation of refuge labor from preparing compatibility determinations that include more comprehensive determinations with additional data requirements and public review before implementation and the potential costs associated with increased refuge visitation. The provisions of the NWRSIA—1997 call for preparing new compatibility determinations at least every 15 years for wildlife-dependent recreational uses and at least every 10 years for non-wildlife-dependent recreational uses. This means that over the next 50 years the Service expects to make at least five compatibility determinations for non-wildlife-dependent recreational uses and at least three compatibility determinations for wildlife-dependent recreational uses on all refuges with these uses.

Reallocation of refuge labor—Compatibility determinations require sound professional judgement, experience and consultation time which are labor costs that are fixed costs in the refuge budget and will not change because of this rulemaking. The requirement of consistent, written, and public reviewed compatibility determinations done according to a specific format will help to guarantee the integrity of the wildlife resources on the more than 93 million acres of refuge lands and waters administered by the Service. The allocation of additional time spent preparing and documenting the compatibility determinations with this rule compared to the time spent without this rule is the portion of fixed cost attributable to this rulemaking. For the approximately 429 refuges in the System with public use, the amount of time for refuge managers to become trained and familiar with the new procedures and requirements is estimated to be an average of five working days. The incremental time spent preparing the compatibility determinations using the new format,

including public review and comment, is estimated to be an average of five working days. The ten working days per compatibility determination only applies for the first determination. All succeeding determinations will only take an additional five days each. Using the average salary level for a refuge manager, the discounted present value of the labor costs associated with learning and preparing compatibility determinations using the new format amounts to a cost of \$5.8 million. The \$5.8 million includes, refuge manager training, three iterations of compatibility determinations for wildlife-dependent recreational uses, and five compatibility determinations for non-wildlife-dependent recreational uses. The present value calculation used a real interest rate of 3.6 percent (30 year Treasury Note real rate of interest, OMB circular A-94). The annualized total costs over the 50 years equate to slightly over \$242 thousand per year. The analytical cycle for this rulemaking was fifty years, since discounting beyond that time reduced future costs to a negligible amount.

Increased public visitation—In addition to labor costs, the better maintenance of trust resources on refuge lands will likely lead to an increase in public visitation and use. This will require some infrastructure changes, i.e. additional nature trails, visitor center improvements, law enforcement, etc. Some of these costs will be a reallocation of refuge labor and the purchasing of additional supplies. For example, more brochures stating refuge hunting and fishing regulations, building new signs and kiosks for additional wildlife viewing trails. It is anticipated that a 5 percent increase in visitation would require some additional expenditures from existing refuge budgets but how much cannot be determined at this time. However, if each refuge with wildlife viewing and photography opportunities were to build a new one-mile trail for this purpose it would cost approximately \$3 million in one time cost and nearly \$400 thousand in annual maintenance. Hunting and fishing visits to refuges would increase the time refuge staff devoted to law enforcement activities which would mean a reallocation of time from other duties. This would lead to maintenance delays. There may be a small impact System-wide but it is impossible to attribute any of these effects to specific refuges at this time.

Comparison of total benefits and total costs—The total benefits of this rulemaking are estimated to be \$21 million annually. The total annualized costs include slightly over \$242

thousand for more comprehensive compatibility determinations and approximately \$500 thousand if each refuge built and maintained an additional one-mile, marked nature trail. It is unknown exactly what kind of additional public use facilities would be required and at which refuge. Some refuges may be able to accommodate a small increase in public use without incurring additional cost and some refuges may face significant costs. These costs cannot be determined for sure until the Service has time to implement the new compatibility regulations and the public is given time to react to the new procedures.

However, the estimated public benefits (a more protected and maintained resource base on 93 million acres of Service refuge lands and waters and an increase in refuge visitation, valued at \$21 million annually) of this rulemaking substantially outweigh the known (\$242 thousand for more comprehensive compatibility determinations) and potential costs (potential facility enhancements and maintenance valued at approximately \$500 thousand per year).

#### *Regulatory Flexibility Act*

We certify that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing, hunting, wildlife observation and photography, and environmental education and interpretation as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This rule is administrative, legal, technical, and procedural in nature and provides more detailed instructions for the compatibility determination process than have existed in the past. This rule does not change the compatibility standard, but implementation of the National Wildlife Refuge System Improvement Act of 1997 may result in more opportunities for wildlife-dependent recreation on national wildlife refuges. For example, more wildlife observation opportunities may occur at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Such changes in permitted use are likely

to increase visitor activity near the national wildlife refuge. To the extent visitors spend time and money in the area that they would not have otherwise, they contribute new income to the regional economy and benefit local businesses.

National wildlife refuge visitation is a small component of the wildlife recreation industry as a whole. In 1996, 77 million U.S. residents over 15 years old spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about \$30 billion on fishing, hunting, and wildlife watching trips (Tables 49, 54, 59, 63, 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, DOI/FWS/FA, 1997). National wildlife refuges recorded about 29 million visitor-days that year (RMIS, FY 1996 Public Use Summary). A study of 1995 national wildlife refuge visitors found their travel spending generated \$401 million in sales and 10,000 jobs for local economies (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). These spending figures include spending that would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on national wildlife refuges will have little industry-wide effect.

Expenditures as a result of this rule are a transfer and not a benefit to many small businesses. We expect the incremental recreational opportunities to be marginal and scattered so we do not expect the rule to have a significant economic effect on a substantial number of small entities in any Region or nationally.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as discussed in the Regulatory Planning and Review section above. This rule:

- a. Will not have an annual effect on the economy of \$100 million or more;
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and
- c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

Since this rule applies to use of Federally-owned and managed national wildlife refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, Tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (E.O. 12630)*

In accordance with Executive Order 12630, this rule does not have significant takings implications. Therefore, a takings implication assessment is not required. These regulations may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the National Wildlife Refuge System.

#### *Federalism Assessment (E.O. 13132)*

As discussed in the Regulatory Planning and Review, and Unfunded Mandates Reform Act sections above, this rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Service has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### *Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This regulation does not contain any information collection requirements other than that already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501). See 50 CFR 25.23 for information concerning that approval.

#### *Section 7 Consultation*

The Service has determined that the regulations established by this final rule will not affect listed species or designated critical habitat and therefore, consultation under section 7 of the Endangered Species Act is not required. The basis for this conclusion is that this

final rule establishes in regulations the process for determining whether or not a use of a national wildlife refuge is a compatible use. The compatibility determination process described in this final rule is only one step in the decision making process for deciding whether or not to permit a use of a national wildlife refuge. It is the ultimate decision to permit or otherwise implement a particular use that is causative with respect to affecting listed species or their critical habitat. The Service will conduct section 7 consultations when actions it authorizes, funds, or carries out may affect listed species or their critical habitat.

#### *National Environmental Policy Act*

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing national wildlife refuge comprehensive conservation plans and step-down management plans, and we make determinations required by NEPA before the addition of national wildlife refuges to the lists of areas open to public uses. The revisions to regulations in this document resolve a variety of issues concerning compatibility of national wildlife refuge uses. In accordance with 516 DM 2, Appendix 1.10, we have determined that this rule is categorically excluded from the NEPA process because it is limited to policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

#### **Available Information for Specific National Wildlife Refuges**

Individual national wildlife refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

- Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231-6214; <http://pacific.fws.gov>.
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Regional Chief, National Wildlife Refuge System, U.S.

Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-1829; <http://southwest.fws.gov>.

- Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713-5300; <http://midwest.fws.gov>.

- Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679-7152; <http://southeast.fws.gov>.

- Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; Telephone (413) 253-8550; <http://northeast.fws.gov>.

- Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145; <http://www.r6.fws.gov>.

- Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3357; <http://alaska.fws.gov>.

#### Primary Author

J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this final rule.

#### List of Subjects

##### 50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

##### 50 CFR Part 26

Recreation and recreation areas, Wildlife refuges.

##### 50 CFR Part 29

Public lands—mineral resources, Public lands—rights-of-way, Wildlife refuges.

For the reasons set forth in the preamble, we amend parts 25, 26, and 29 of Title 50, Chapter I, Subchapter C of the Code of Federal Regulations as follows:

#### PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub. L. 102-402, 106 Stat. 1961.

2. Amend § 25.12 by revising the definitions of “Coordination area,” “National wildlife refuge,” “National Wildlife Refuge System,” and “Service or we” and adding alphabetically definitions of “Compatibility determination,” “Compatible use,” “Comprehensive conservation plan,” “Conservation, and Management,” “Director,” “Fish, Wildlife, and Fish and wildlife,” “National Wildlife Refuge System mission, and System mission,” “Plant,” “Purpose(s) of the refuge,” “Refuge management activity,” “Refuge management economic activity,” “Refuge Manager,” “Regional Chief,” “Refuge use, and Use of a refuge,” “Regional Director,” “Secretary,” “Sound professional judgment,” “State, and United States,” “Wildlife-dependent recreational use, and Wildlife-dependent recreation,” and “You” to read as follows:

#### § 25.12 What do these terms mean?

(a) \* \* \*

*Compatibility determination* means a written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. The Director makes this delegation through the Regional Director.

*Compatible use* means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge.

*Comprehensive conservation plan* means a document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the

National Wilderness Preservation System; and meets other mandates.

*Conservation, and Management* mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

*Coordination area* means a wildlife management area made available to a State by cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664 or by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*). The States manage coordination areas but they are part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

*Director* means the Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

\* \* \* \* \*

*Fish, Wildlife, and Fish and wildlife* mean any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

\* \* \* \* \*

*National wildlife refuge, and Refuge* mean a designated area of land, water, or an interest in land or water located within the National Wildlife Refuge System but does not include coordination areas.

*National Wildlife Refuge System, and System* mean all lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and other areas for the protection and conservation of fish and wildlife including those that are threatened with extinction as determined in writing by the Director or so directed by Presidential or Secretarial order. The determination by the Director may not be delegated.

*National Wildlife Refuge System mission, and System mission* mean to

administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

\* \* \* \* \*

*Plant* means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

*Purpose(s) of the refuge* means the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit. For refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the wilderness portion of the refuge.

*Refuge management activity* means an activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, refuge support groups, and volunteers.

*Refuge management economic activity* means a refuge management activity on a national wildlife refuge which results in generation of a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: Farming, grazing, haying, timber harvesting, and trapping.

*Refuge Manager* means the official directly in charge of a national wildlife refuge or the authorized representative of such official. In the case of a national wildlife refuge complex, this refers to the official directly in charge of the complex.

*Regional Chief* means the official in charge of the National Wildlife Refuge System within a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*Refuge use*, and *Use of a refuge* mean a recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity.

*Regional Director* means the official in charge of a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*Secretary* means the Secretary of the Interior or the authorized representative of such official.

*Service*, *We*, and *Us* mean the U.S. Fish and Wildlife Service, Department of the Interior.

*Sound professional judgment* means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a refuge manager's field experience and knowledge of the particular refuge's resources.

*State*, and *United States* mean one or more of the States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

\* \* \* \* \*

*Wildlife-dependent recreational use*, and *Wildlife-dependent recreation* mean a use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), specifies that these are the six priority general public uses of the National Wildlife Refuge System.

\* \* \* \* \*

*You* means the public.

3. Revise § 25.21 to read as follows:

**§ 25.21 When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?**

(a) Except as provided below, all areas included in the National Wildlife Refuge System are closed to public access until and unless we open the area for a use or uses in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) and this subchapter C. See 50 CFR 36 for details on use and access restrictions, and the public participation and closure process established for Alaska national wildlife refuges. We may open an area by regulation, individual permit, or public notice, in accordance with § 25.31 of this subchapter.

(b) We may open a national wildlife refuge for any refuge use, or expand, renew, or extend an existing refuge use only after the Refuge Manager determines that it is a compatible use

and not inconsistent with any applicable law. Lands subject to the patent restrictions imposed by Section 22(g) of the Alaska Native Claims Settlement Act are subject to the compatibility requirements of Parts 25 and 26 of 50 CFR except as otherwise provided in paragraph (b)(1) of this section.

(1) We will complete compatibility determinations for uses of Alaska Native Claims Settlement Act 22(g) lands in compliance with the following requirements:

(i) Refuge managers will work with 22(g) landowners in implementation of these regulations. The landowners should contact the Refuge Manager in advance of initiating a use and request a compatibility determination. After a compatibility determination is requested, refuge managers have no longer than ninety (90) days to complete the compatibility determination and notify the landowner of the finding by providing a copy of the compatibility determination or to inform the landowner of the specific reasons for delay. If a refuge manager believes that a finding of not compatible is likely, the Refuge Manager will notify the landowner prior to rendering a decision to encourage dialog on how the proposed use might be modified to be compatible.

(ii) Refuge managers will allow all uses proposed by 22(g) landowners when the Refuge Manager determines the use to be compatible with refuge purposes.

(iii) Compatibility determinations will include only evaluations of how the proposed use would affect the ability of the refuge to meet its mandated purposes. The National Wildlife Refuge System mission will not be considered in the evaluation. Refuge purposes will include both pre-ANILCA purposes and those established by ANILCA, so long as they do not conflict. If conflicts arise, ANILCA purposes will take precedence.

(iv) A determination that a use is not compatible may be appealed by the landowner to the Regional Director. The appeal must be submitted in writing within forty-five (45) days of receipt of the determination. The appeals process provided for in 50 CFR 36.41(i) (3) through (5) will apply.

(v) Compatibility determinations for proposed uses of 22(g) lands will only evaluate the effects of the use on the adjacent refuge lands, and the ability of that refuge to achieve its purposes, not on the effects of the proposed use to the 22(g) lands.

(vi) Compatibility determinations for 22(g) lands that a use is compatible are not subject to re-evaluation unless the

use changes significantly, significant new information is made available that could affect the compatibility determination, or if requested by the landowner.

(vii) Refuge comprehensive conservation plans will not include 22(g) lands, and compatibility determinations affecting such lands will not be automatically re-evaluated when the plans are routinely updated. (viii) Refuge special use permits will not be required for compatible uses of 22(g) lands. Special conditions necessary to ensure a proposed use is compatible may be included in the compatibility determination and must be complied with for the use to be considered compatible.

(c) The Refuge Manager may temporarily allow or initiate any refuge use without making a compatibility determination if necessary to protect the health and safety of the public or any fish or wildlife population.

(d) When we add lands to the National Wildlife Refuge System, the Refuge Manager will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the comprehensive conservation plan for the national wildlife refuge. We will make these compatibility determinations in accordance with procedures in § 26.41 of this subchapter.

(e) In the event of a threat or emergency endangering the health and safety of the public or property or to protect the resources of the area, the Refuge Manager may close or curtail refuge uses of all or any part of an opened area to public access and use in accordance with the provisions in § 25.31, without advance notice. See 50 CFR 36.42 for procedures on closing Alaska national wildlife refuges.

(f) We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan, or at least every 15 years, whichever is earlier. In addition, a refuge manager always may re-evaluate the compatibility of a use at any time.

(g) Except for uses specifically authorized for a period longer than 10 years (such as right-of-ways), we will re-evaluate compatibility determinations

for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. In addition, a refuge manager always may re-evaluate the compatibility of a use at any time.

(h) For uses in existence on November 17, 2000 that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will frequently monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. However, the Service will request modifications to the terms and conditions of these permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible. After November 17, 2000 no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for modifications to the terms and conditions, if necessary to ensure compatibility. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization. When we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective.

(i) When we re-evaluate a use for compatibility, we will take a fresh look at the use and prepare a new compatibility determination following the procedure outlined in 50 CFR 26.41.

4. Amend § 25.44 by:

- a. Revising the heading and paragraphs (b), and (c)(1);
- b. Removing paragraph (d); and
- c. Redesignating paragraph (e) as (d) to read as follows:

**§ 25.44 How do we grant permits for easement area uses?**

\* \* \* \* \*

(b) We require permits for use of easement areas administered by us where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the Regional Director or a designee. We may grant special use permits to owners of servient estates, or to third parties with the owner's agreement, by the Regional Director or a designee, upon written

determination that such permitted use is compatible. If we ultimately determine that the requested use will not affect the United States' interest, the Regional Director will issue a letter of non-objection.

\* \* \* \* \*

(c) \* \* \*

(1) The permitted use is compatible; and

\* \* \* \* \*

**PART 26—[AMENDED]**

5. The authority citation for part 26 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

6. Add § 26.41 to read as follows:

**§ 26.41 What is the process for determining if a use of a national wildlife refuge is a compatible use?**

The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless the Refuge Manager has determined that the use is a compatible use. This section provides guidelines for making compatibility determinations, and procedures for documenting compatibility determinations and for periodic review of compatibility determinations. We will usually complete compatibility determinations as part of the comprehensive conservation plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. We will make all compatibility determinations in writing.

(a) *What information do we include in a compatibility determination?* All compatibility determinations will include the following information:

- (1) The proposed or existing use;
- (2) The name of the national wildlife refuge;
- (3) The authorities used to establish the national wildlife refuge;
- (4) The purpose(s) of the national wildlife refuge;
- (5) The National Wildlife Refuge System mission;
- (6) The nature and extent of the use including the following:
  - (i) What is the use? Is the use a priority public use?;
  - (ii) Where would the use be conducted?;
  - (iii) When would the use be conducted?;
  - (iv) How would the use be conducted?; and
  - (v) Why is the use being proposed?.

(7) An analysis of costs for administering and managing each use;

(8) The anticipated impacts of the use on the national wildlife refuge's purposes and the National Wildlife Refuge System mission;

(9) The amount of opportunity for public review and comment provided;

(10) Whether the use is compatible or not compatible (does it or will it materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge);

(11) Stipulations necessary to ensure compatibility;

(12) A logical explanation describing how the proposed use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge;

(13) The Refuge Manager's signature and date signed; and

(14) The Regional Chief's concurrence signature and date signed.

(15) The mandatory 10- or 15-year re-evaluation date.

(b) *Making a use compatible through replacement of lost habitat values or other compensatory mitigation.* We will not allow compensatory mitigation to make a proposed refuge use compatible, except by replacement of lost habitat values as provided in paragraph (c) of this section. If we cannot make the proposed use compatible with stipulations we cannot allow the use.

(c) *Existing right-of-ways.* We will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way which will affect a unit of the National Wildlife Refuge System, unless: the design adopts appropriate measures to avoid resource impacts and includes provisions to ensure no net loss of habitat quantity and quality; restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management

district affected by the maintenance; and all restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable. Maintenance of an existing right-of-way includes minor expansion or minor realignment to meet safety standards.

(d) *Termination of uses that are not compatible.* When we determine an existing use is not compatible, we will expeditiously terminate or modify the use to make it compatible. Except with written authorization by the Director, this process of termination or modification will not exceed 6 months from the date that the compatibility determination is signed.

## PART 29—[AMENDED]

7. The authority citation for part 29 continues to read as follows:

**Authority:** Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

8. Revise § 29.1 to read as follows:

### § 29.1 May we allow economic uses on national wildlife refuges?

We may only authorize public or private economic use of the natural resources of any national wildlife refuge, in accordance with 16 U.S.C. 715s, where we determine that the use contributes to the achievement of the national wildlife refuge purposes or the National Wildlife Refuge System mission. We may authorize economic use by appropriate permit only when we have determined the use on a national wildlife refuge to be compatible. Persons exercising economic privileges on national wildlife refuges will be subject to the applicable provisions of this subchapter and of other applicable laws and regulations governing national wildlife refuges. Permits for economic use will contain such terms and conditions that we determine to be

necessary for the proper administration of the resources. Economic use in this section includes but is not limited to grazing livestock, harvesting hay and stock feed, removing timber, firewood or other natural products of the soil, removing shell, sand or gravel, cultivating areas, or engaging in operations that facilitate approved programs on national wildlife refuges.

### § 29.3 [Reserved]

9. Remove and reserve § 29.3.

10. Amend § 29.21 by:

a. Revising the heading;

b. Removing the paragraph designations and placing the definitions in alphabetical order;

c. Removing the definitions of "Compatible," "Regional Director," "Secretary," and "Service;" and

d. Adding a definition of "Compatible use" to read as follows:

### § 29.21 What do these terms mean?

*Compatible use* means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge. The term "inconsistent" in section 28(b)(1) of the Mineral Leasing Act of 1920 (30 U.S.C. 185) means a use that is not compatible.

\* \* \* \* \*

11. Amend § 29.21–7 by removing paragraph (c) and revising the heading to read as follows:

### § 29.21–7 What payment do we require for use and occupancy of national wildlife refuge lands?

Dated: July 28, 2000.

**Stephen C. Saunders,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 00–26389 Filed 10–17–00; 8:45 am]

BILLING CODE 4310–55–P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Final Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice contains our final policy that describes the process for determining whether or not a use of a national wildlife refuge is a compatible use. This final compatibility policy incorporates the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRSA-1997) that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSA-1966) into our policy as part 603 Chapter 2 of the Fish and Wildlife Service Manual. Also, published concurrently in the final rule section of this **Federal Register** are our final compatibility regulations describing the process for determining whether or not a use of a national wildlife refuge is a compatible use.

**DATES:** This policy is effective November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of this final policy or for additional information, contact: J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203 (Telephone 703/358-1744, Fax 703/358-2248). You may also download a copy from: <http://www.fws.gov/r9pdm/home/newfrnotice.html>.

**SUPPLEMENTARY INFORMATION:** We published the Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49067). In addition, we published the Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49056). We invited the public to provide comments on the proposed rule and draft policy by November 8, 1999. During this 60-day comment period, we received several requests for an extension to the comment period. In order to ensure that the public had an adequate opportunity to review and comment on the proposed rule and draft policy, we extended the comment period until December 8, 1999 (64 FR 62163 and 62217 published November 16, 1999). Therefore, the

proposed rule and draft policy were available for public review and comment for 90 days. We revised the proposed rule and draft policy based on comments we received.

**Background**

The NWRSA-1997 amends and builds upon the NWRSA-1966 providing an "Organic Act" for the National Wildlife Refuge System. The NWRSA-1997 clearly establishes that wildlife conservation is the singular National Wildlife Refuge System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRSA-1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the refuge. We built this legal requirement into our policy and regulations. Since 1966, the compatibility standard for refuge uses has helped us manage refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRSA-1997 maintains the compatibility standard as provided in the NWRSA-1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. This policy will help ensure that compatibility becomes a more effective conservation standard, is more consistently applied across the entire National Wildlife Refuge System, and is more understandable and open to involvement by the public.

The House Report accompanying the NWRSA-1997 states "Currently, the law does not include a mission or a definition of a "compatible use" for the Refuge System. Refuge managers are responsible for determining, on a case-by-case basis, whether activities on refuges are compatible. Management of the Refuge System has been the focus of numerous studies in the last two decades, including two General Accounting Office reports, two reports of advisory boards to the Interior Department, a report prepared by the USFWS, and several hearings by the former Committee on Merchant Marine and Fisheries, which then had jurisdiction over the Refuge System. These reports and hearings highlighted that refuges have not always been managed as a national system because of

the lack of an overall mission for the System. These reports concluded that the lack of an overall mission and management procedures had allowed numerous incompatible uses to be tolerated on wildlife refuges." The House Report further states "H.R. 1420 establishes that the conservation of fish, wildlife, plants and their habitats is the mission of the National Wildlife Refuge System and sets forth the policy and procedures through which the System and individual refuges are to be managed in order to fulfill that mission for the long-term benefit of the American public. H.R. 1420 requires that public use of a refuge may be allowed only where the use is compatible with the mission of System and purpose of the individual refuge, and sets forth a standard by which the Secretary shall determine whether such uses are compatible." Lastly, the House Report states "The Committee expects that this legislation will diminish the likelihood of future litigation by providing a statutory compatibility standard, a process for making those determinations, a clear conservation mission for the System, and a planning process that will ensure greater public involvement in management decisions on refuges."

The NWRSA-1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSA-1966 or the Refuge Recreation Act of 1962 (RRA-1962) for



wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSA-1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSA-1997 and the effective date of the compatibility regulations published elsewhere in this issue of the **Federal Register** under the existing compatibility process. After the effective date of those regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in those regulations.

Those regulations, published elsewhere in this issue of the **Federal Register**, will comply with all the compatibility requirements in the NWRSA-1997.

#### Purpose of This Final Policy

The purpose of this final policy is to establish in policy the process for determining compatibility of proposed refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSA-1997. Published concurrently in this **Federal Register** are our final compatibility regulations. This final compatibility policy reflects the final compatibility regulations and provides additional detail for each step in the compatibility determination process.

#### Summary of Comments Received

We received 506 comment letters by mail, fax or email on our proposed rule and draft policy. They were from Federal, State and local governments, U.S. Congress, Alaska Native Village Corporations, non-government organizations, research institutions and individuals.

Some comments addressed specific elements in the proposed rule and specific elements in the draft policy, while many comments addressed an issue that was common to both the proposed rule and draft policy. Since the comments on the proposed rule and draft policy were so intertwined and oftentimes a comment on an issue was directly related to both the proposed rule and draft policy, we chose to address the comments collectively by issue rather than by proposed rule and draft policy separately. Since we analyzed the comments collectively on

the proposed rule and draft policy, we are including a full summary of the comments and our responses in the **SUPPLEMENTARY INFORMATION** section of the final rule only and not in the **SUPPLEMENTARY INFORMATION** section of this notice of our final policy.

We considered all of the information and recommendations for improvement included in the comments and made changes to the proposed rule and draft policy where appropriate. The number of issues addressed in each comment letter varied widely, ranging from one issue to several issues. We identified 28 groups of issues. See the **SUPPLEMENTARY INFORMATION** section of our final rule for a full summary of the comments and our responses.

#### Revisions to the Draft Policy

We considered all of the information and recommendations for improvement included in the comments we received during the 90-day public review and comment period. We made changes to the proposed rule and draft policy as discussed in the "Summary of Comments Received" section of the final rule published in today's issue of the **Federal Register**. The following represents a summary of the significant revisions made to the proposed rule and draft policy.

(1) In the proposed regulations and draft policy we stated that lands subject to the patent restrictions imposed by Section 22(g) of ANCSA are subject to the compatibility standard. In the final regulations (25.21(b)) and final policy (2.8(C)) we have provided more detail on how this will be implemented. These changes allow us to conduct compatibility determinations differently with regard to the ANCSA 22(g) lands in recognition of the unique status of these lands.

(2) In the proposed regulations and draft policy we stated that we will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensation. In the final regulations (26.41(b) and (c)) and final policy (2.11(C) and (D)) we maintain this requirement with one exception. We will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensatory mitigation, except for maintenance of an existing right-of-way including minor expansions or minor realignments to meet safety standards. This change provides a workable mechanism for dealing with previously approved right-of-ways.

(3) In the proposed regulations and draft policy we stated that prior to approving each compatibility determination, the Refuge Manager will

consult with the regional office supervisor. In the final regulations (26.41(a)(14)) and final policy (2.12(A)(14)) we changed the required regional office consultation to a required regional office concurrence on all compatibility determinations. This change will help ensure that we look at both large-scale (System mission) and local-scale (refuge purposes) issues when preparing compatibility determinations.

(4) In the proposed regulations and draft policy we stated that the Refuge Manager may temporarily suspend, allow, or initiate any use in a refuge if necessary to immediately act in order to protect the health and safety of the public or any fish or wildlife population. We stated in the draft policy that these temporary actions should not exceed 12 months. In the final policy (2.10(C)) we reduced the time frame for these temporary actions to not exceed 30 days.

(5) In the proposed regulations and draft policy we stated that we would re-evaluate compatibility determinations for existing uses whenever any one of a number of criteria was met. In the final regulations (25.21(f), (g), (h) and (i)) and final policy (2.11(H)) we added significant detail to clarify certain aspects of how and when we would re-evaluate compatibility determinations. Among other clarifying language we added the following: whenever a re-evaluation is triggered we will take a fresh look at the use and complete a new compatibility determination following the procedure outlined in the regulations and policy; whenever we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective; for uses in existence on the effective date of these regulations that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself, however, the Service will request modifications to the terms and conditions of the permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible; and after the effective date of these regulations no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for the modifications to the terms and conditions, if necessary to ensure compatibility.



## Required Determinations

We have analyzed the impacts of this final policy in concert with the final rule published concurrently in today's issue of the **Federal Register**. For compliance with applicable laws and executive orders affecting the issuance of rules and policies, see the **SUPPLEMENTARY INFORMATION** section of the final rule.

## Primary Author

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## Final Compatibility Policy

### Fish and Wildlife Service

### National Wildlife Refuge System Uses

Refuge Management: Part 603 National Wildlife Refuge System Uses

#### Chapter 2 Compatibility

#### 2.1 What is the Purpose of This Chapter?

This chapter provides policy for determining compatibility of proposed and existing uses of national wildlife refuges.

#### 2.2 What Does This Policy Apply To?

This policy applies to all proposed and existing uses of national wildlife refuges where we have jurisdiction over such uses.

#### 2.3 What is the Compatibility Policy?

The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge unless the Refuge Manager has determined that the use is a compatible use.

#### 2.4 What Are the Objectives of This Chapter?

A. To provide guidelines for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing national wildlife refuge uses; and

B. To ensure that we administer proposed and existing national wildlife refuge uses according to laws, regulations, and policies concerning compatibility.

#### 2.5 What Are Our Statutory Authorities for Requiring Uses of National Wildlife Refuges To Be Compatible?

A. *National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C.*

*668dd–668ee (Refuge Administration Act):* This law states that “The Secretary is authorized, under such regulations as he may prescribe, to—(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible” and that “\* \* \* the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.” The law also provides that, in administering the National Wildlife Refuge System, “\* \* \* the Secretary is authorized to \* \* \* Issue regulations to carry out this Act.” A significant directive of the Refuge Administration Act is to ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System for present and future generations of Americans. We are now using the term “ecological integrity” in lieu of the phrase “biological integrity, diversity, and environmental health.” Uses that we reasonably may anticipate to conflict with pursuing this directive to maintain the ecological integrity of the System are contrary to fulfilling the National Wildlife Refuge System mission and are therefore not compatible. Fragmentation of the National Wildlife Refuge System's wildlife habitats is a direct threat to the integrity of the National Wildlife Refuge System, both today and in the decades ahead. Uses that we reasonably may anticipate to reduce the quality or quantity or fragment habitats on a national wildlife refuge will not be compatible.

B. *Refuge Recreation Act of 1962, 16 U.S.C. 460k–460k–4 (Refuge Recreation Act):* This law requires that any recreational use of a national wildlife refuge must be compatible with the primary purposes for which the refuge was established.

C. *Alaska National Interest Lands Conservation Act of 1980, P.L. 96–487, 94 Stat. 23–71 (ANILCA):* Section 304 of ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges.

#### 2.6 What Do These Terms Mean?

A. *Compatibility determination:* A written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. The Director makes this

delegation through the Regional Director.

B. *Compatible use:* A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.

C. *Comprehensive conservation plan:* A document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates.

D. *Conservation, and Management:* To sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and translocation, and regulated taking.

E. *Coordination area:* A wildlife management area made available to a State: (1) by cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or, (2) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*). The States manage coordination areas but they are part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

F. *Director:* The Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

G. *Fish, Wildlife, and Fish and wildlife:* Any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

H. *National wildlife refuge, and Refuge:* A designated area of land, water, or an interest in land or water located within the National Wildlife

Refuge System but does not include coordination areas.

*I. National Wildlife Refuge System, and System:* All lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and other areas for the protection and conservation of fish and wildlife including those that are threatened with extinction as determined in writing by the Director or so directed by Presidential or Secretarial order. The determination by the Director may not be delegated.

*J. National Wildlife Refuge System mission, and System mission:* To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

*K. Plant:* Any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

*L. Purpose(s) of the refuge:* The purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit. For refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the wilderness portion of the refuge.

*M. Refuge management activity:* An activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, refuge support groups, and volunteers.

*N. Refuge management economic activity:* A refuge management activity on a national wildlife refuge which results in generation of a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping.

*O. Refuge Manager:* The official directly in charge of a national wildlife refuge or the authorized representative of such official. In the case of a national wildlife refuge complex, this refers to the official directly in charge of the complex.

*P. Regional Chief:* The official in charge of the National Wildlife Refuge System within a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*Q. Refuge use, and Use of a refuge:* A recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity.

*R. Regional Director:* The official in charge of a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*S. Secretary:* The Secretary of the Interior or the authorized representative of such official.

*T. Service, We, and Us:* The U.S. Fish and Wildlife Service, Department of the Interior.

*U. Sound professional judgment:* A finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a refuge manager's field experience and knowledge of the particular refuge's resources.

*V. State, and United States:* One or more of the States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

*W. Wildlife-dependent recreational use, and Wildlife-dependent recreation:* A use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) specifies that these are the six priority general public uses of the National Wildlife Refuge System.

## 2.7 What Are Our Responsibilities?

### A. Director

Provides national policy for making compatibility determinations to ensure that such determinations comply with all applicable authorities.

### B. Regional Director

(1) Ensures that refuge managers follow laws, regulations, and policies when making compatibility determinations.

(2) Makes the final decision on compatibility determinations when the

Regional Chief does not concur with the Refuge Manager.

(3) Notifies the Director regarding controversial or complex compatibility determinations.

### C. Regional Chief

(1) Reviews all compatibility determinations for the purpose of deciding whether to concur.

(2) Refers a compatibility determination to the Regional Director if the Regional Chief does not concur with the Refuge Manager. Discusses non-concurrence with the Refuge Manager for possible resolution before referring to the Regional Director.

(3) Notifies the Regional Director regarding controversial or complex compatibility determinations.

### D. Refuge Manager

(1) Determines if a proposed or existing use is subject to the compatibility standard.

(2) Determines whether a use is compatible or not compatible.

(3) Documents all compatibility determinations in writing.

(4) Ensures that we provide for public review and comment opportunities for all compatibility determinations, unless previously provided.

(5) Refers all compatibility determinations to the Regional Chief for concurrence.

## 2.8 What is the Compatibility Standard for Alaska Refuges?

A. The Refuge Administration Act establishes the same standard for compatibility for Alaska refuges as for other national wildlife refuges. The provisions of ANILCA are the primary guidance refuge managers should apply when examining issues regarding subsistence use. We may alter the compatibility process, in some cases, for Alaska refuges to include additional procedural steps, such as when reviewing applications for oil and gas leasing on non-North Slope lands (ANILCA Sec. 1008) and for applications for transportation and utility systems (ANILCA Sec. 1104).

B. Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order,

and not to those portions of the refuge added by ANILCA.

C. Section 22(g) of the Alaska Native Claims Settlement Act provides that patents issued to Village Corporations for selected land within the boundaries of a refuge existing on December 18, 1971, the signing date of the Act, will contain provisions that these lands remain subject to laws and regulations governing the use and development of such refuges. This includes application of the compatibility standard for such use and development, excepting certain differences provided in regulation (50 CFR 25.21) that acknowledge the unique status of these lands.

#### *2.9 When is a Compatibility Determination Required?*

A. We require a compatibility determination for all refuge uses as defined by the term "refuge use" and must include in the analysis consideration of all associated facilities, structures, and improvements, including those constructed or installed by us or at our direction. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of this policy and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

B. Facilities, structures, and improvements commonly associated with recreational public uses include: environmental education centers; boat/fishing docks; parking lots; boat ramps; roads; trails; viewing platforms/towers; and visitor centers.

C. Facilities, structures, and improvements commonly associated with refuge management economic activities include: loading/unloading areas; construction, operation, and maintenance buildings; parking lots; roads and trails; fences; stock ponds and other livestock watering facilities; and crop irrigation facilities.

D. We will make compatibility determinations for such facilities, structures, and improvements at the same time we make the compatibility determination for the use or activity in question.

#### *2.10 When is a Compatibility Determination Not Required?*

A. *Refuge management activity.* We do not require a compatibility determination for refuge management activities as defined by the term "refuge management activity" except for "refuge management economic activities." Examples of refuge management activities which do not require a

compatibility determination include: prescribed burning; water level management; invasive species control; routine scientific monitoring, studies, surveys, and censuses; historic preservation activities; law enforcement activities; and maintenance of existing refuge facilities, structures, and improvements. In addition, we do not require compatibility determinations for State wildlife management activities on a national wildlife refuge pursuant to a cooperative agreement between the State and the Fish and Wildlife Service where the Refuge Manager has made a written determination that such activities support fulfilling the refuge purposes or the System mission.

B. *Other exceptions.* (1) There are other circumstances under which the compatibility requirements may not be applicable. The most common exceptions involve property rights that are not vested in the Federal Government, such as reserved rights to explore and develop minerals or oil and gas beneath a refuge. In some cases, these exceptions may include water rights, easements, or navigable waters. Exceptions may apply when there are rights or interests imparted by a treaty or other legally binding agreement, where primary jurisdiction of refuge lands falls to an agency other than us, or where legal mandates supersede those requiring compatibility. Where reserved rights or legal mandates provide that we must allow certain activities, we should not prepare a compatibility determination. In the case of reserved rights, the Refuge Manager should work with the owner of the property interest to develop stipulations in a special use permit or other agreement to alleviate or minimize adverse impacts to the refuge.

(2) Communication and cooperation between the Refuge Manager and the owner of reserved rights will help protect refuge resources without infringing upon privately-held rights. Refuge managers may find it helpful in these instances to secure legal advice from the Department of the Interior Office of the Solicitor.

(3) Compatibility provisions of the Refuge Administration Act do not apply to Department of Defense overflights or non-Department of Defense overflights above a refuge. However, other Federal laws (e.g., Airborne Hunting Act, Endangered Species Act, Bald Eagle Protection Act) may govern overflights above a refuge. For Department of Defense overflights, active communication and cooperation between the Refuge Manager and the local base commander will be the most effective way to protect refuge

resources. For non-Department of Defense overflights, active communication and cooperation between the Refuge Manager and personnel at local airports, pilot training schools, and private groups regarding the Federal Aviation Administration's requested minimum altitudes over national wildlife refuges will be the most effective way to protect refuge resources.

(4) Compatibility requirements apply to activities on bodies of water in or within any area of the National Wildlife Refuge System. Under 50 CFR 25.11, this is effectively to the extent of the ownership interest of the United States in lands or waters. Where activities on water bodies not within an area of the National Wildlife Refuge System are affecting refuge resources, the Refuge Manager should seek State cooperation in managing the activities. If necessary, the Refuge Manager should consider refuge-specific regulations that would address the problem or consult with the Office of the Solicitor regarding other legal remedies for injury to refuge resources.

(5) Compatibility provisions of the Refuge Administration Act do not apply to activities authorized, funded, or conducted by another Federal agency that has primary jurisdiction over the area where a refuge or a portion of a refuge has been established, if those activities are conducted in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the area.

C. *Emergencies.* The Refuge Administration Act states that the Secretary may temporarily suspend, allow, or initiate any use in a refuge if the Secretary determines it is necessary to immediately act in order to protect the health and safety of the public or any fish or wildlife population. Authority to make decisions under this emergency power is delegated to the Refuge Manager. Temporary actions should not exceed 30 days and will usually be of shorter duration. Such emergency actions are not subject to the compatibility determination process as outlined in this chapter. When using this authority, the Refuge Manager will notify the Regional Chief in advance of the action, or in cases where the nature of the emergency requires immediate response, as soon as possible afterwards, and typically no later than the start of business on the first normal workday following the emergency action. The Refuge Manager will create a written record (memorandum to the file) of the decision, the reasons supporting it, and why it was necessary to protect the

health and safety of the public or any fish or wildlife population.

*D. Denying a proposed use without determining compatibility.* (1) The Refuge Manager should deny a proposed use without determining compatibility if any of the following situations exist:

(a) The proposed use conflicts with any applicable law or regulation (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);

(b) The proposed use conflicts with any applicable executive order, or written Department of the Interior or Service policy;

(c) The proposed use conflicts with the goals or objectives in an approved refuge management plan (e.g., comprehensive conservation plan, master plan or step-down management plan);

(d) The proposed use has already been considered in an approved refuge management plan and was not accepted;

(e) The proposed use is inconsistent with public safety;

(f) The proposed use is a use other than a wildlife-dependent recreational use that is not manageable within the available budget and staff; or

(g) The proposed use conflicts with other resource or management objectives provided that the Refuge Manager specifies those objectives in denying the use.

(2) A compatibility determination should be prepared for a proposed use only after the Refuge Manager has determined that we have jurisdiction over the use and has considered items (a) through (g) above (see Exhibit 1).

*E. Existing compatibility determinations.* Compatibility determinations in existence prior to the effective date of this policy will remain in effect until and unless modified and will be subject to periodic re-evaluation as described in section 2.11 H. Any use specifically authorized for a period longer than 10 years (such as right-of-ways) is subject to a compatibility determination at the time of the initial application and when the term expires and we receive a request for renewal. We will use periodic re-evaluations for such long-term uses to review compliance with permit terms and conditions.

#### 2.11 What Are Considerations When Applying Compatibility?

*A. Sound professional judgment.* (1) In determining what is a compatible use, the Refuge Administration Act relies on the "sound professional judgment" of the Director. The Director delegates authority to make

compatibility determinations through the Regional Director to the Refuge Manager. Therefore, it is the Refuge Manager who is required and authorized to exercise sound professional judgment. Compatibility determinations are inherently complex and require the Refuge Manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources, and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws. When a refuge manager is exercising sound professional judgment, the Refuge Manager will use available information which may include consulting with others both inside and outside the Service.

(2) The Refuge Manager must also consider the extent to which available resources (funding, personnel, and facilities) are adequate to develop, manage, and maintain the proposed use so as to ensure compatibility. The Refuge Manager must make reasonable efforts to ensure that the lack of resources is not an obstacle to permitting otherwise compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation). If reasonable efforts do not yield adequate resources to develop, manage, and maintain the wildlife-dependent recreational use, the use will not be compatible because the Service will lack the administrative means to ensure proper management of the public activity on the refuge.

(3) Refuge managers are reminded that, unless otherwise provided for in law or other legally binding directive, permitting uses of national wildlife refuges is a determination vested by law in the Service. Under no circumstances (except emergency provisions necessary to protect the health and safety of the public or any fish or wildlife population) may we authorize any use not determined to be compatible.

*B. Materially interfere with or detract from.* (1) When completing compatibility determinations, refuge managers use sound professional judgment to determine if a use will materially interfere with or detract from the fulfillment of the System mission or the purpose(s) of the refuge. Inherent in fulfilling the System mission is not degrading the ecological integrity of the refuge. Compatibility, therefore, is a threshold issue, and the proponent(s) of any use or combination of uses must demonstrate to the satisfaction of the Refuge Manager that the proposed use(s)

pass this threshold test. The burden of proof is on the proponent to show that they pass; not on the Refuge Manager to show that they surpass. Some uses, like a proposed construction project on or across a refuge that affects the flow of water through a refuge, may exceed the threshold immediately, while other uses, such as boat fishing in a small lake with a colonial nesting bird rookery may be of little concern if it involves few boats, but of increasing concern with growing numbers of boats. Likewise, when considered separately, a use may not exceed the compatibility threshold, but when considered cumulatively in conjunction with other existing or planned uses, a use may exceed the compatibility threshold.

(2) While refuge managers should be looking for tangible impacts, the fact that a use will result in a tangible adverse effect, or a lingering or continuing adverse effect is not necessarily the overriding concern regarding "materially interfere with or detract from." These types of effects should be taken into consideration but the primary aspect is how does the use and any impacts from the use affect our ability to fulfill the System mission and the refuge purposes. For example, the removal of a number of individual animals from a refuge through regulated hunting, trapping or fishing would, in many instances, help the Refuge Manager manage to improve the health of wildlife populations. However, the take of even one individual of a threatened or endangered species could significantly impact the refuge's ability to manage for and perpetuate that species. Likewise, wildlife disturbance which is very limited in scope or duration may not result in interference with fulfilling the System mission or refuge purposes. However, even unintentional minor harassment or disturbance during critical biological times, in critical locations, or repeated over time may exceed the compatibility threshold.

(3) The Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use.

*C. Making a use compatible through replacement of lost habitat values or other compensatory mitigation.* We will not allow compensatory mitigation to make a proposed refuge use compatible, except by replacement of lost habitat values as provided in (D) below. If the proposed use cannot be made

compatible with stipulations we cannot allow the use.

*D. Existing Right-of-ways.* We will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way which will affect a unit of the National Wildlife Refuge System, unless (1) the design adopts appropriate measures to avoid resource impacts and includes provisions to ensure no net loss of habitat quantity and quality; (2) restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management district affected by the maintenance; and (3) all restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable. Maintenance of an existing right-of-way includes minor expansion or minor realignment to meet safety standards. Examples of minor expansion or minor realignment include: expand the width of a road shoulder to reduce the angle of the slope; expand the area for viewing on-coming traffic at an intersection; and realign a curved section of a road to reduce the amount of curve in the road.

*E. Refuge-specific analysis.* We must base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of a particular use on refuge resources. We should base this refuge-specific analysis on information readily available to the Refuge Manager, including field experience and familiarity with refuge resources, or made available to the Refuge Manager by the State, Tribes, proponent(s) or opponent(s) of the use, or through the public review and comment period. Refuge-specific analysis need not rely on refuge-specific biological impact data, but may be based on information derived from other areas or species which are similarly situated and therefore relevant to the refuge-specific analysis. We do not require refuge managers to independently generate data to make determinations but rather to work with available information. The Refuge Manager may work at their discretion with the proponent(s) of the use or other interested parties to gather additional information before making the determination. If information available to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility, and we must not authorize or permit the use. See 2.12 (A) (8) for additional information dealing with priority public uses.

*F. Relationship to management plans.* The Refuge Manager will usually complete compatibility determinations as part of the comprehensive conservation plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. The Refuge Manager will incorporate compatibility determinations prepared concurrently with a plan as an appendix to the plan. These compatibility determinations may summarize and incorporate by reference what the Refuge Manager addressed in detail in the comprehensive conservation plan, step-down management plan, or associated National Environmental Policy Act (NEPA) document.

*G. Managing conflicting uses.* The Refuge Manager may need to allocate uses in time and/or space to reduce or eliminate conflicts among users of the refuge. If this cannot be done, the Refuge Manager may need to terminate or disallow one or more of the uses. The Refuge Administration Act does not prioritize among the six wildlife-dependent recreational uses. Therefore, in the case of direct conflict between these priority public uses, the Refuge Manager should evaluate, among other things, which use most directly supports long-term attainment of refuge purposes and the System mission. This same analysis would support a decision involving conflict between two non-priority public uses. Where there are conflicts between priority and non-priority public uses, priority public uses take precedence.

*H. Re-evaluation of uses.* (1) We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan, or at least every 15 years, whichever is earlier. In addition, a refuge manager always may re-evaluate the compatibility of a use at any time.

(2) Except for uses specifically authorized for a period longer than 10 years (such as right-of-ways), we will re-evaluate compatibility determinations for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. Again, a refuge manager always

may re-evaluate the compatibility of a use at any time.

(3) For uses in existence on November 17, 2000 that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will frequently monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. However, the Service will request modifications to the terms and conditions of the permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible. After November 17, 2000 no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for the modifications to the terms and conditions, if necessary to ensure compatibility. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization. When we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective.

(4) The Refuge Manager will determine whether change in the conditions under which the use is permitted or new information regarding the effects of the use is significant or not. The Refuge Manager will make this decision by considering whether these new conditions or new information could reasonably be expected to change the outcome of the compatibility determination. Any person at any time may provide information regarding changes in conditions and new information to the Refuge Manager. However, the Refuge Manager maintains full authority to determine if this information is or is not sufficient to trigger a re-evaluation.

(5) When we re-evaluate a use for compatibility, we will take a fresh look and prepare a new compatibility determination following the procedure outlined in section 2.12 A.

*I. Public review and comment.* An opportunity for public review and comment is required for all compatibility determinations. For compatibility determinations prepared concurrently with comprehensive conservation plans or step-down management plans, we can achieve public review and comment concurrently with the public review and comment of the draft plan and

associated NEPA document. For compatibility determinations prepared separately from a plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach based on complexity, controversy, and level of impact to the refuge. See 2.12 A9 for details on public review and comment.

#### 2.12 What Information Do We Include in a Compatibility Determination?

A. All compatibility determinations will include the following information. To maintain consistency, we will use the format provided in Exhibit 2 for documenting all compatibility determinations.

(1) *Use.* Identify the use. A use may be proposed or existing, and may be an individual use, a specific use program, or a group of related uses. The Refuge Manager will determine whether to consider a use individually, a specific use program, or in conjunction with a group of related uses. However, whenever practicable, the Refuge Manager should concurrently consider related uses or uses that are likely to have similar effects and associated facilities, structures and improvements, in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment.

(2) *Refuge name.* Identify the name of the refuge.

(3) *Establishing and acquisition authority(ies).* Identify the specific authority(ies) used to establish the refuge (e.g., Executive Order, public land order, Secretarial Order, refuge-specific legislation, or general legislation).

(4) *Refuge purpose(s).* Identify the purpose(s) of the refuge from the documents identified in 2.12 A (3). For a use proposed for designated wilderness areas within the System, the Refuge Manager must first analyze whether the use can be allowed under the terms of the Wilderness Act (16 U.S.C. sections 1131–36). If so, the Refuge Manager must then determine whether the use is compatible. As a matter of policy, the Refuge Manager will also analyze whether the use is compatible with the purposes of the Wilderness Act, which makes such purposes supplemental to those of the national wildlife refuge.

(5) *National Wildlife Refuge System mission.* The mission of the National Wildlife Refuge System is “to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and

plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”

(6) *Description of use.* Describe the nature and extent of the use. The Refuge Manager may work with the proponent(s) of a use to gather information required in items (a) through (e) below to describe the proposed use. If the use is described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, the Refuge Manager may provide a summary of the use and reference the plan or NEPA document. At a minimum, the Refuge Manager must address and include the following in the compatibility determination:

(a) What is the use? Is the use a priority public use?

(b) Where would the use be conducted? Describe the specific areas of the refuge that will be used: habitat types and acres involved; key fish, wildlife, and plants that occur in or use that habitat; and the proportion of total refuge acreage and the specific habitat type involved. Include a description of other areas that may be affected incidental to the specific use, such as access to the destination area and storage of equipment. This information may be described in writing and on a map.

(c) When would the use be conducted? Describe the time of year and day, and duration of the use.

(d) How would the use be conducted? Describe the techniques to be used, types of equipment required, and number of people per given period. Include supporting uses and associated facilities, structures and improvements as appropriate, e.g., boating and boat ramps to support fishing, camping and campsites to support hunting, etc.

(e) Why is this use being proposed? Describe the reason for the use and the need to conduct the use on the refuge. Describe the extent to which other areas in the vicinity provide similar opportunities.

(7) *Availability of resources.* (a) Complete an analysis of costs for administering and managing each use. Implicit within the definition of sound professional judgment is that adequate resources (including financial, personnel, facilities, and other infrastructure) exist or can be provided by the Service or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the System mission. If resources are lacking for

establishment or continuation of wildlife-dependent recreational uses, the Refuge Manager will make reasonable efforts to obtain additional resources or outside assistance from States, other public agencies, local communities, and/or private and non-profit groups before determining that the use is not compatible. If adequate resources cannot be secured, the use will be found not compatible and cannot be allowed. Efforts to find additional funding must be documented on the compatibility determination form.

(b) For many refuges, analysis of available resources will have been made for general categories of uses when preparing comprehensive conservation plans, step-down management plans, other plans, or NEPA documents. If the required and available resources are described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, provide a summary of the required and available resources for the use and reference the plan or NEPA document. If not sufficiently covered in the planning document, the following should be documented in the compatibility determination:

(i) Resources involved in the administration and management of the use.

(ii) Special equipment, facilities or improvements necessary to support the use. Itemize expenses such as costs associated with special equipment, physical changes or improvements necessary on the refuge that would be required to comply with disabled access requirements.

(iii) Maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.).

(iv) Monitoring costs (e.g., biological or visitor surveys, maintenance of control sites, etc.) to assess the impact of uses over time on natural resources and quality of the visitors' experience.

(c) This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs that we can show as being directly caused by the proposed use.

(d) Offsetting revenues, such as entrance fees and user fees that are returned to the refuge, should be documented in determining the costs to administer individual or aggregated uses.

(8) *Anticipated impacts of the use.* (a) Identify and describe the reasonably anticipated impacts of the use. In assessing the potential impacts of a proposed use on the refuge's purpose(s) and the System mission, refuge managers will use and cite available sources of information, as well as their best professional judgment, to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narrative reports, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience and consultation with wildlife research professionals, State wildlife resource managers and industry professionals, etc. Refuge managers are not required to independently generate data on which to base compatibility determinations. The Refuge Manager may work with the proponent(s) of the use and other interested parties to gather additional information before making the determination. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use. If the use is a priority public use, and sufficient information is not available, the Refuge Manager should work with the proponent of the use to acquire the necessary information before finding the use not compatible based solely on insufficient available information. This does not mean that the burden of information collection is shifted to the Refuge Manager, but that the Refuge Manager should take steps to ensure that the additional information needs are clearly identified and that appropriate assistance is provided in facilitating the collection of that information.

(b) Refuge managers should distinguish between long-term and short-term impacts. A use may initially only be expected to cause minor impacts to the resource. However, the cumulative impacts over time may become quite substantial. Other uses may have impacts which are very short in duration but very significant while they are occurring, or are the converse: very long in duration but very insignificant in effect.

(c) Although direct impacts on refuge resources, such as wildlife disturbance or destruction of habitats, or degradation of ecological integrity may

be easily predicted, the analysis of impacts must also address indirect and cumulative effects that may be reasonably associated with a specific use. Indirect impacts of a proposed use may include taking away or diverting resources from an activity that would support fulfilling the System mission or refuge's purposes and therefore would be a factor in determining whether the proposed use is compatible or not. A use with little potential for impact on its own may contribute to more substantive cumulative impacts on refuge resources when conducted in conjunction with or preceding or following other uses, and when considered in conjunction with proposed or existing uses of lands and waters adjacent to the refuge.

(d) If the anticipated impacts of the use are described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, refuge managers may provide a summary of the anticipated impacts of the use and reference the plan or NEPA document.

(e) Refuge managers should list all conservation objectives in approved refuge management plans (e.g., comprehensive conservation plan, comprehensive management plan, master plan, or step-down management plan), that reasonably might be affected by the proposed use. To the extent possible, the determination of anticipated impacts should include an explanation of the impacts on these specific conservation objectives and how that affects fulfilling refuge purposes or the System mission.

(9) *Public review and comment.* (a) The Refuge Manager must provide an opportunity for public review and comment on the proposed refuge uses(s) before issuing a final compatibility determination. Public review and comment includes actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use. Additionally, public review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The extent and complexity of public review and comment that is necessary or appropriate will be determined by the Refuge Manager. For example, significantly modifying a popular hunting, fishing, or wildlife observation program would likely be controversial and would require considerable opportunity for public review and comment, whereas temporarily closing a small portion of a wildlife observation trail would likely require much less opportunity for

public review and comment. For compatibility determinations prepared concurrently with comprehensive conservation plans or step-down management plans, public involvement can be achieved concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separately from a plan, the level of public review and comment will be handled through the following tiered approach.

(i) For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the System to result in no significant or cumulative impact to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters.

(ii) For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published.

(iii) For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

(b) Public review and comment efforts must be documented on the compatibility determination form and relevant information retained with compatibility determinations as part of the administrative record. The documentation must include a description of the process used, a summary of comments received, and a description of any actions taken or not taken because of the comments received. All written public comments will be retained in the administrative record. If a comprehensive conservation plan or NEPA document is being



prepared, this information would be included in these documents as part of the administrative record.

(10) *Use is compatible or not compatible.* Identify whether the use is compatible or not compatible. This is where the Refuge Manager indicates whether the use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge.

(11) *Stipulations necessary to ensure compatibility.* (a) Describe any stipulations (terms or conditions) necessary to ensure compatibility. If a use is not compatible as initially proposed, it may be modified with stipulations that avoid or minimize potential adverse impacts, making the use compatible. It is not the responsibility of the Refuge Manager to develop a sufficient set of stipulations so as to make an otherwise not compatible proposed use, compatible. If the use cannot be modified with stipulations sufficient to ensure compatibility, the use cannot be allowed.

(b) Protective stipulations in the compatibility determination for a particular use should specify the manner in which that use must be carried out to ensure compatibility. Stipulations must be detailed and specific. They may identify such things as limitations on time (daily, seasonal, or annual) or space where a use could be safely conducted, the routes or forms of access to be used, and any restrictions on the types of equipment to be used or number of people to be involved. Monitoring of the use must be sufficient to evaluate compliance with stated conditions and swift action must be taken to correct or respond to any serious deviations.

(12) *Justification.* After completing the steps described above, the Refuge Manager will provide a written justification for the determination. The justification must provide a logical explanation describing how the proposed use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge.

(13) *Signature.* The Refuge Manager will sign and date the compatibility determination and submit it to the Regional Chief for review and concurrence.

(14) *Concurrence.* The Regional Chief will sign and date the compatibility determination if in concurrence. If the Regional Chief does not concur the Regional Chief must discuss the determination with the Refuge Manager

and attempt to resolve the differences. If they do not agree the Regional Chief must refer the compatibility determination to the Regional Director and the use may not be allowed unless, upon review, the Regional Director makes a written determination that the use is compatible.

(15) *Mandatory 10- or 15-year re-evaluation date.* At the time the compatibility determination is made, the Refuge Manager will insert the required maximum 10-year re-evaluation date for uses other than wildlife-dependent recreational uses or a 15-year maximum re-evaluation date for wildlife-dependent recreational uses.

#### 2.13 *How Do We Expedite the Compatibility Determination Process?*

The Refuge Administration Act provides for expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purpose(s) of the refuge or the System mission. The intent of this provision is to reduce the administrative burden on the Refuge Manager and speed the compatibility determination process for uses that are frequently found to be compatible. For minor, incidental, or one-time uses which have been shown to have no significant or cumulative impact to the refuge and would likely generate minimal public interest, the time period for an opportunity for public review and comment may be reduced to the time available.

#### 2.14 *What Do We Do With Existing Uses That are not Compatible?*

Existing uses determined to be not compatible will be expeditiously terminated or modified to make the use compatible. Except with written authorization by the Director, this process of termination or modification will not exceed 6 months from the date that the compatibility determination is signed.

#### 2.15 *May We Deny Uses That are Compatible?*

A determination that a use is compatible does not require the use to be allowed. Determinations on whether to allow otherwise compatible uses are based on compliance with other laws, the System mission, policy, refuge purposes, availability of resources to manage the use, possible conflicts with other uses, public safety, and other administrative factors. The Refuge Manager must clearly document and describe in writing the administrative reasons for not permitting a compatible use. Usually, a refuge manager will make this decision prior to making a

compatibility determination and completing one will be unnecessary.

#### 2.16 *What are the Procedures for Appealing a Permit Denial?*

Procedures for appealing a permit denial are provided in 50 CFR 25.45 (special use permits), 50 CFR 29.22 (rights-of-way), 50 CFR 36.41 (i) (special use permits for refuges in Alaska), or 43 CFR 36.8 (rights-of-way for Alaska). We are providing no administrative mechanism to appeal a compatibility determination.

#### 2.17 *When Do We Prepare Pre-Acquisition Compatibility Determinations?*

A. When we add lands to the National Wildlife Refuge System, the Refuge Manager assigned management responsibility for the land to be acquired, will identify prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the comprehensive conservation plan. For this purpose, the Refuge Manager will make a pre-acquisition compatibility determination that will apply to existing wildlife-dependent recreational public uses that may be allowed, if determined to be compatible during the interim between acquisition and completion of the comprehensive conservation plan. The purpose of this policy is to inform the public, prior to acquisition, which pre-existing wildlife-dependent recreational public uses will be allowed to continue on newly acquired lands. Such decisions must be based on the compatibility standards and procedures outlined in this chapter. These pre-acquisition compatibility determinations for continuing existing wildlife-dependent recreational public uses will be made in writing, using the format in Exhibit 2.

B. Pre-acquisition compatibility determinations only apply to existing wildlife-dependent recreational public uses and are intended to be short-term in nature, bridging the gap between acquisition of refuge lands and completion of refuge comprehensive conservation plans. They should be made in conjunction with the preparation and release of appropriate pre-acquisition Realty documentation, prepared pursuant to NEPA. Pre-acquisition compatibility determinations should document the type, level, timing and location of wildlife-dependent recreational public



uses that are presently occurring on lands proposed for acquisition.

*2.18 What Is the Relationship of Compatibility to NEPA?*

NEPA requires us to examine the environmental impact of our actions, incorporate environmental information, and utilize public participation, as appropriate, in the planning and implementation of our actions. NEPA compliance is required whenever we take an action. It is the action that

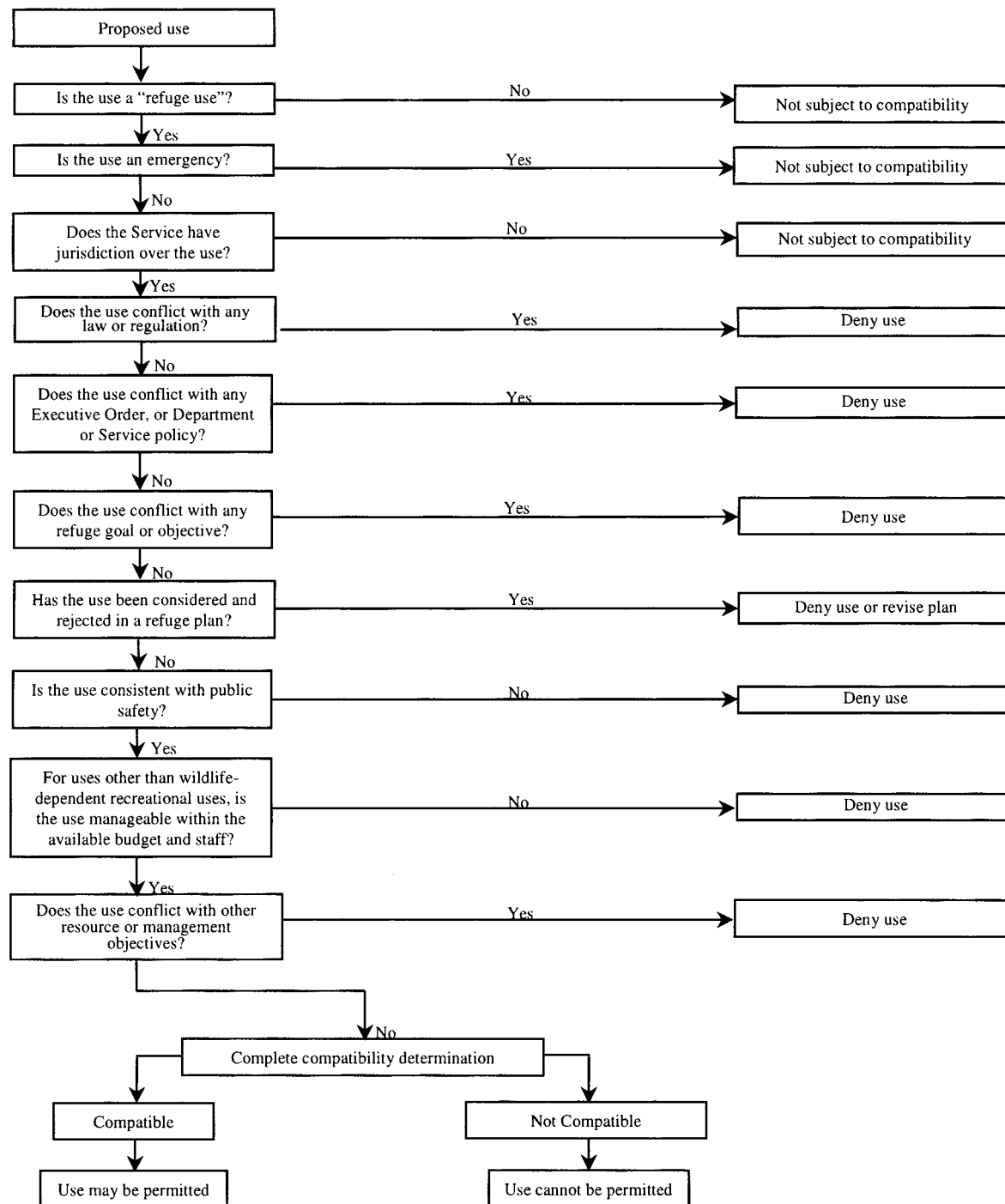
triggers NEPA. A compatibility determination is not an action under NEPA, rather it is only one of many factors that we take into account whenever we consider taking an action, *i.e.*, allow a refuge use. Deciding whether to allow the use is the action, not the compatibility determination. Comprehensive conservation plans, step-down management plans, and the issuance of special use permits are actions about allowing or not allowing

refuge uses. These actions require NEPA compliance. Many compatibility determinations will be completed concurrently with these processes. Compatibility determinations are an integral part of our decision about refuge uses; however, it is important to note that compatibility is only one of many factors that we take into account when we consider allowing or not allowing a refuge use.

**BILLING CODE 4310-55-P**

## Exhibit 1

## Compatibility Determination Flowchart



<b>Compatibility Determination</b>	Determination (check one below):	(Signature and Date)
Use:	<input type="checkbox"/> Use is Not Compatible	Mandatory 10- or 15-year Re-evaluation
Refuge Name:	<input type="checkbox"/> Use is Compatible With Following	Date: _____
Establishing and Acquisition Authority(ies):	Stipulations	Dated: July 28, 2000.
Refuge Purpose(s):	Stipulations Necessary to Ensure	<b>Jamie Rappaport Clark,</b>
National Wildlife Refuge System Mission:	Compatibility:	<i>Director, U.S. Fish and Wildlife Service.</i>
Description of Use:	Justification:	[FR Doc. 00-26390 Filed 10-17-00; 8:45 am]
Availability of Resources:	Signature: _____ Refuge Manager: _____	<b>BILLING CODE 4310-55-P</b>
Anticipated Impacts of the Use:	(Signature and Date)	
Public Review and Comment:	Concurrence: _____ Regional Chief: _____	



# Federal Register

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**Wednesday,  
October 18, 2000**

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## **Part IV**

# **Architectural and Transportation Barriers Compliance Board**

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**36 CFR Part 1191**

**Americans With Disabilities Act (ADA)  
Accessibility Guidelines for Buildings and  
Facilities; Play Areas; Final Rule**

# ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

## 36 CFR Part 1191

[Docket No. 98-2]

RIN 3014-AA21

## Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas

**AGENCY:** Architectural and  
Transportation Barriers Compliance  
Board.

**ACTION:** Final rule.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) is issuing final accessibility guidelines to serve as the basis for standards to be adopted by the Department of Justice for new construction and alterations of play areas covered by the Americans with Disabilities Act (ADA). The guidelines include scoping and technical provisions for ground level and elevated play components, accessible routes, ramps and transfer systems, ground surfaces, and soft contained play structures. The guidelines will ensure that newly constructed and altered play areas meet the requirements of the ADA and are readily accessible to and usable by individuals with disabilities. The Department of Justice must adopt the guidelines as standards for them to be enforceable under the ADA.

**DATES:** The guidelines are effective November 17, 2000. The incorporation by reference of certain publications listed in the guidelines is approved by the Director of the Federal Register as of November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004-1111. Telephone number (202) 272-5434 extension 134 (Voice); (202) 272-5449 (TTY). E-mail address: greenwell@access-board.gov.

### SUPPLEMENTARY INFORMATION:

#### Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272-5434, by pressing 2 on the telephone keypad, then 1, and requesting publication S-39 (Play Areas Final Rule). Persons using a TTY should call (202) 272-5449. Please record a name, address, telephone number and

request publication S-39. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). This document is also available on the Board's Internet site (<http://www.access-board.gov/play/finalrule.htm>).

### Background

The Americans with Disabilities Act is a comprehensive civil rights law which prohibits discrimination on the basis of disability.<sup>1</sup> Titles II and III of the ADA require, among other things, that newly constructed and altered State and local government facilities, places of public accommodation, and commercial facilities be readily accessible to and usable by individuals with disabilities. Recreation facilities, including play areas, are among the types of facilities covered by titles II and III of the ADA.

The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines to ensure that new construction and alterations of facilities covered by titles II and III of the ADA are readily accessible to and usable by individuals with disabilities.<sup>2</sup> The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991.<sup>3</sup> ADAAG contains general scoping and technical provisions (ADAAG 1 to 4) that apply to all types of facilities, and special application sections (ADAAG 5 to 12) that include additional scoping and technical provisions for certain types of facilities.<sup>4</sup> The technical

provisions are generally based on adult dimensions and anthropometrics. In 1998, ADAAG was amended to include technical provisions based on children dimensions and anthropometrics for building elements designed specifically for children ages 12 and younger.<sup>5</sup>

The Department of Justice is responsible for issuing regulations to implement titles II and III of the ADA. The regulations issued by the Department of Justice must include accessibility standards for newly constructed and altered facilities covered by titles II and III of the ADA. The standards must be consistent with the accessibility guidelines issued by the Access Board. The Department of Justice has adopted ADAAG as the Standard for Accessible Design for title III of the ADA.<sup>6</sup>

This final rule amends ADAAG by adding a new special application section for play areas (ADAAG 15.6) that includes scoping and technical provisions for ground level and elevated play components, accessible routes, ramps and transfer systems, ground surfaces, and soft contained play structures.<sup>7</sup> The Access Board published a notice of proposed rulemaking (NPRM) on the play area guidelines in the **Federal Register** in April 1998.<sup>8</sup> The NPRM describes the full history of the rulemaking. The play area guidelines were developed through regulatory negotiation, a supplement to the traditional rulemaking process that allows face-to-face negotiations among representatives of affected interests in order to achieve consensus on the text of a proposed rule. The regulatory

<sup>5</sup> See 63 FR 2060 (January 13, 1998) (<http://access-board.gov/adaag/kids/child.htm>).

<sup>6</sup> See 28 CFR part 36, Appendix A (<http://www.usdoj.gov/crt/ada/reg3a.html>). The Department of Justice standards currently include ADAAG 1 to 10. State and local governments currently have the option of using ADAAG or an earlier standard, the Uniform Federal Accessibility Standards (UFAS), when constructing or altering facilities under the Department of Justice regulations for title II of the ADA. See 28 CFR 35.151(c) (<http://www.usdoj.gov/crt/ada/reg2/html>). The Department of Justice has issued a notice of proposed rulemaking to eliminate this option. 59 FR 31808 (June 20, 1994).

<sup>7</sup> In the NPRM, the play area guidelines were proposed to be a separate special application section numbered ADAAG 16. In the final rule, the play area guidelines are included in the special application section reserved for recreation facilities and are numbered ADAAG 15.6. ADAAG 15 eventually will include scoping and technical provisions for other recreation facilities, including amusement rides, boating and fishing facilities, golf, miniature golf, sports facilities, and swimming pools. The Access Board published a notice of proposed rulemaking (NPRM) on these recreation facility guidelines in the **Federal Register** in July 1999. See 64 FR 37326 (July 9, 1999) (<http://www.access-board.gov/recreation/recrepnrm.htm>).

<sup>8</sup> See 63 FR 24080 (April 30, 1998) (<http://www.access-board.gov/play/nprm.htm>).

<sup>1</sup> See 42 U.S.C. 12101 *et seq.* (<http://www.usdoj.gov/crt/ada/pubs/ada.txt>).

<sup>2</sup> The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

<sup>3</sup> See 36 CFR part 1191, Appendix A (<http://www.access-board.gov/adaag/html/adaag.htm>).

<sup>4</sup> The special application sections cover the following facilities: restaurants and cafeterias (ADAAG 5); medical care facilities (ADAAG 6); business, mercantile and civic (ADAAG 7); libraries (ADAAG 8); transient lodging (ADAAG 9); transportation facilities (ADAAG 10); judicial, legislative, and regulatory facilities (ADAAG 11); and detention and correctional facilities (ADAAG 12). ADAAG 13 is reserved for housing and ADAAG 14 is reserved for public rights-of-way.

negotiation committee represented a variety of interests, including play equipment manufacturers, landscape architects, parks and recreation facilities, city and county governments, schools, child care facilities, and people with disabilities.<sup>9</sup> The regulatory negotiation committee conducted meetings in various cities across the country and sought public participation throughout the process. The regulatory negotiation committee reached consensus on proposed guidelines for play areas and public comment was sought on the proposed guidelines through the NPRM. The Access Board held a public hearing in Denver, Colorado during the comment period. Approximately 100 comments were received on the NPRM.

The Department of Justice must adopt the play area guidelines as standards for them to be enforceable under the ADA.

### General Issues

General issues pertaining to the application of the play area guidelines are discussed below. The specific provisions of the guidelines are discussed under the Section-by-Section Analysis.

#### Child Care Facilities

*Comment.* The National Child Care Association (NCCA) questioned the estimated cost impact of the play area guidelines on child care facilities. NCCA claimed that the cost would be prohibitive for child care facilities. Child care providers who testified at the public hearing in Denver reiterated NCCA's concerns and noted that the guidelines would have the greatest impact on family child care providers. NCCA requested that carrying and lifting children on play areas be permitted as "alternative accessibility" or "equivalent facilitation," or that play areas in child care facilities for children ages 5 and under be exempted from the guidelines.

*Response.* NCCA was a member of the regulatory negotiation committee that reached consensus on the play area guidelines. The regulatory negotiation

committee discussed various issues associated with play areas within child care facilities at great length. The regulatory negotiation committee limited application of the guidelines to play areas designed and constructed for children ages two and over. The regulatory negotiation committee also included provisions in the guidelines to address concerns related to smaller facilities, including child care facilities. For example, transfer systems are permitted instead of ramps to provide access to composite play structures with less than 20 elevated play components. Accessible routes at ground level are permitted to be 44 inches minimum wide, instead of 60 inches minimum wide, in play areas with less than 1,000 square feet. These provisions lessen the cost impact of the guidelines on smaller facilities.

For the NPRM, it was estimated that there would be no cost impact on child care facilities. This estimate was based on several assumptions. First, it was assumed that all child care facilities would have small play areas. The economic assessment for the NPRM used a model of a small play area to represent play areas typically found in child care facilities. The model included two separate play areas totaling 920 square feet: one for infants and toddlers under age two, which is not covered by the guidelines; and one for pre-school children ages two through five, which is covered by the guidelines.<sup>10</sup> The play area for the pre-school children included a composite play structure with 4 elevated play components on a single deck, 4 ground level play components, and a moveable play activity. The economic assessment assumed that, in the absence of the guidelines, if such a play area was designed and constructed in the future, it would have a transfer platform and steps that would make the composite play structure accessible.<sup>11</sup> Thus, the guidelines would not have any cost impact on the composite play structure. The economic assessment also assumed that, in the absence of the guidelines, the play area would have a ground surface of engineered wood fiber, or a combination of rubber and loose fill materials that would provide an adequate accessible route to the

composite play structure and to a sufficient number of ground level play components. Thus, the guidelines would not have any cost impact on the ground surface.

NCCA claimed that play areas in child care facilities are much larger than the model used in the economic assessment because most States require child care facilities to provide more than 1,000 square feet of play space. The Access Board has reviewed each State's licensing requirements for child care facilities. About two-thirds of the States require that a minimum of 50 square feet to 75 square feet of play space be provided for each child.<sup>12</sup> However, the State requirements are expressed generally in terms of "play space," not "playgrounds." The Access Board contacted over 125 child care facilities around the country and found that most of their playgrounds have 4 to 7 play components (the average number of play components was 4.7 components). Furthermore, all the children enrolled in a child care facility do not use the playground at the same time, but rather the children use the playground in smaller groups. Play area equipment catalogues show designs similar to the model used in the economic assessment for pre-school children. This additional information supports the assumption made in the economic assessment regarding the size of play areas and number of play components in child care facilities.<sup>13</sup>

Based on comments from child care facilities, the assumption made in the economic assessment for the NPRM regarding the type of ground surface materials used for play areas in child care facilities has been changed. For the final rule, the economic assessment assumes that, in the absence of the guidelines, the ground surface material will be a loose fill such as sand or wood chips. The cost difference between using loose fill and engineered wood fiber is \$300 to \$950, and the cost difference between using loose fill and a combination of rubber and loose fill is \$946 to \$2,215. When maintenance costs for the various ground surface materials are factored in, the cost difference over a fifteen year life cycle

<sup>9</sup> The following organizations were represented on the regulatory negotiation committee: American Society of Landscape Architects, ASTM Public Playground Subcommittee F15.29, ASTM Soft Contained Play Subcommittee F15.36, ASTM Playground Surfacing Systems Subcommittee F08.63, International Play Equipment Manufacturers Association, National Association of Counties, National Association of Elementary School Principals, National Child Care Association, National Council on Independent Living, National Easter Seal Society, National League of Cities, National Parent-Teacher Association, National Recreation and Park Association, Spinal Bifida Association of America, TASH, United Cerebral Palsy Associations, and U.S. Access Board.

<sup>10</sup> The U.S. Consumer Product Safety Commission recommends that for younger children, playgrounds have separate areas with appropriately sized equipment and materials to serve their developmental levels. See Handbook for Public Playground Safety p. 8 (<http://cpsc.gov/cpscpub/pubs/325.pdf>).

<sup>11</sup> The factors on which this assumption is based are discussed later in this preamble under Regulatory Process Matters, Executive Order 12866: Regulatory Planning and Review, Baseline.

<sup>12</sup> According to NCCA, the average licensed capacity for child care facilities is 70 children. At 50 square feet to 75 square feet minimum per child, the average child care facility would have a minimum of 3,500 square feet to 5,250 square feet of play space.

<sup>13</sup> For the final rule, the economic assessment estimates that there are 102,458 licensed child care facilities, and that 80 percent to 100 percent of these facilities have play areas. The economic assessment assumes the following size distribution of play areas among child care facilities: 60 percent small, 30 percent medium, and 10 percent large.

range from a cost savings of \$190 to a cost increase of \$460 for engineered wood fiber, and from a cost savings of \$260 to a cost increase of \$1,000 for a combination of rubber and loose fill. These cost savings or cost increases are not prohibitive. Additionally, small businesses that have revenues of \$1 million or less, or 30 or fewer full-time workers are entitled to a 50 percent tax credit for expenses to remove architectural barriers in their facilities, up to a maximum expenditure of \$10,250; and a tax deduction of \$15,000 a year is also available for architectural barrier removal, regardless of business size.<sup>14</sup> Child care facilities that remove architectural barriers in their existing play areas by replacing loose fill with accessible ground surfaces and by providing ramps and transfer systems to composite play structures may use the tax credit and tax deduction in combination. In addition, federal funds are available through the Community Development Block Grant Program to remove architectural barriers in existing facilities.<sup>15</sup> State and local governments may use these funds to remove architectural barriers in existing play areas in publicly operated and privately operated child care facilities.

It has been a long standing interpretation of civil rights laws for individuals with disabilities that carrying and lifting are ineffective and unacceptable methods for providing accessibility, and thus NCCA's request in this regard cannot be accepted.<sup>16</sup> Challenge and skill development are both a part of the play experience, and children with disabilities are capable of enjoying this experience.

An exception has been added to the final rule that exempts family child care facilities where the proprietor actually resides from the play area guidelines. These family child care facilities are located in private homes. State licensing requirements generally set a maximum capacity of 12 children for these home based child care facilities and they usually care for a smaller number of children. There are important differences, besides size, between home

based child care facilities and center based child care facilities. Center based child care facilities typically purchase public playground equipment costing an average of \$7,000, for which accessible products are available. Family child care facilities on the other hand typically purchase home playground equipment costing from \$100 for a simple swing set to \$1,000 for more elaborate systems, for which accessible products may not be readily available. Family child care facilities place the playground equipment in the front or back yards of their homes, which typically consist of grass or dirt and may not provide the types of ground surfaces used at public playgrounds. The cost of providing ground surfaces complying with the play area guidelines could far exceed the cost of purchasing home playground equipment and result in the home owner deciding not to provide any playground equipment or to purchase moveable playground equipment, which would not be covered by the guidelines.

Family child care facilities must still comply with all the other requirements of the ADA, including the general obligation to provide equal opportunity to individuals with disabilities to enjoy the services of their facilities and to remove architectural barriers in existing facilities where it is readily achievable (*i.e.*, easily accomplishable and able to be carried out without much difficulty or expense).<sup>17</sup>

#### *Amusement Attractions*

*Comment.* The International Association of Amusement Parks and Attractions (IAAPA) requested that amusement attractions and amusement rides be exempt from the play area guidelines.

*Response.* An exception has been added to the final rule that exempts amusement attractions located in amusement parks and theme parks from the play area guidelines, except the provisions for soft contained play structures. The exception is limited and applies to amusement attractions such as fun houses and barrels. If an amusement park or theme park has an eating place or picnic area that provides commonly used playground equipment, the playground equipment is not considered an amusement attraction and must comply with the play area guidelines.

Amusement attractions are not exempt from the other provisions of ADAAG. For example, assembly areas with fixed seats where entertainment is provided must provide wheelchair seating spaces complying with ADAAG 4.33 (Assembly Areas). Amusement attractions which have unique designs and features that are not adequately addressed by ADAAG must comply with ADAAG to the extent possible. Where ADAAG cannot be fully applied to amusement attractions, operators of amusement parks and theme parks are still subject to all the other requirements of the ADA, including the general obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.

The play area guidelines do not apply to amusement rides. The NPRM on recreation facilities proposed to add scoping and technical provisions to ADAAG for amusement rides.<sup>18</sup>

*Comment.* IAAPA also claimed that the play area guidelines conflict with a Department of Justice regulation for title III of the ADA, which provides that public accommodations are not required to alter their inventory to include accessible or special goods that are designed for individuals with disabilities, such as books in alternate formats (*e.g.*, Braille or audio tape), closed-captioned videotapes, specially sized or designed clothing, and special foods to meet particular dietary needs.<sup>19</sup>

*Response.* The Department of Justice regulation referenced by IAAPA applies to retail merchandise sold by public accommodations, and not to the design, construction, or alteration of facilities. Amusement rides are not retail merchandise. The regulation does not limit the other requirements of the ADA, including the requirement that new construction and alterations of facilities be readily accessible to and usable by individuals with disabilities.

#### *Water Play Components*

*Comment.* Commenters requested that the play area guidelines address water play components. Water play components incorporate water into the play experience. Water play components may be stand alone or part of a composite structure, and may be located in shallow water or pools.

*Response.* With regard to water play components located in shallow water or pools, the NPRM on recreation facilities requested additional information on

<sup>14</sup> See Tax Incentives Packet on the ADA (<http://www.usdoj.gov/crt/ada/taxpack.htm>).

<sup>15</sup> See 42 U.S.C. 5305(a)(5). The U.S. Department of Housing and Urban Development reports that local governments spent over \$40 million of Community Development Block Grant funds on architectural barrier removal projects in fiscal year 1999.

<sup>16</sup> See Appendix A to 28 CFR 35.150(b)(1) (<http://www.usdoj.gov/crt/ada/reg2.html>). See also *Ramirez v. District of Columbia*, No. 99-803 (TFH) (D.D.C. March 27, 2000) where the court decided that assigning an aide to carry a child with cerebral palsy into an inaccessible restroom in a public school violates the ADA.

<sup>17</sup> See 28 CFR 36.201, 36.207 and 36.304 (<http://www.usdoj.gov/crt/ada/reg3a.html>). For additional guidance, see Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act (<http://www.usdoj.gov/crt/ada/childq%26a.html>).

<sup>18</sup> See note 7, *supra*.

<sup>19</sup> See 28 CFR 36.307 (<http://www.usdoj.gov/crt/ada/reg3a/html>).

those water play components.<sup>20</sup> Water play components located in shallow water or pools will be addressed in the final rule on recreation facilities.

With regard to water play components not located in shallow water or pools, the play area guidelines apply to these water play components. Where these water play components are located at the ground level, the provisions for ground level play components apply, including locating one of each type on an accessible route. Where these water play components are elevated, the provisions for elevated play components apply.

#### *Unique Play Areas*

*Comment.* Commenters requested clarification regarding application of the guidelines to play areas with unique designs and features. They provided examples of children's gardens, challenge courses, rock climbing walls, and tree houses. A manufacturer of interactive play systems claimed that the scoping and technical provisions were not appropriate for its play areas.

*Response.* A play area is a portion of a site containing play components designed and constructed for children. Play components are defined broadly to include elements intended to generate specific opportunities for play, socialization, or learning. Play components may be manufactured or natural. The scoping and technical provisions of the play area guidelines were developed to address commonly used playground equipment and structures. There will be play areas that have unique designs and features which are not adequately addressed by the guidelines. In those situations, the play area guidelines and the rest of ADAAG are to be applied to the extent possible. An accessible route must be provided to the play area. Where there are multiple play components, the scoping provisions for ground level and elevated play components are to be used to determine how many play components must be located on an accessible route. Where a play area has unique features for which there are no applicable scoping provisions, then a reasonable number, but at least one, of the features must be located on an accessible route. Where there are appropriate technical provisions, they must be applied to the elements that are covered by the scoping provisions. Where a play area has unique designs for which the technical provisions are not appropriate, the operators of those play areas are still subject to all the other requirements of the ADA, including the general

obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.<sup>21</sup>

Interactive play systems include a wide variety of structures. Some are similar to commonly used playground equipment and soft contained play structures, and can comply with applicable provisions of the play area guidelines. Others include water play components located in shallow water or pools. As discussed above, water play components located in shallow water or pools will be addressed in the final rule on recreation facilities. Still others are multi-level indoor structures that are supervised. Platform lifts may provide an appropriate design solution to provide access to those structures.

#### *Alterations and Additions*

*Comment.* Commenters requested clarification regarding how the play area guidelines apply to alterations, especially where play components are replaced in existing play areas and the existing ground surface is not accessible.

*Response.* ADAAG 4.1.6 (Accessible Buildings: Alterations) contains general scoping provisions relating to alterations. ADAAG 4.1.6(1)(b) provides that when an existing element or space is altered, the altered element or space must comply with the applicable provisions for new construction. If it is technically infeasible for the altered element or space to fully comply with the applicable new construction provisions, ADAAG 4.1.6(j) requires that the alterations provide for accessibility to the maximum extent feasible.

ADAAG 4.1.6(1)(b) also provides that when the applicable provisions for new construction require that an element or space be located on an accessible route, the altered element or space is not required to be located on an accessible route, unless required by ADAAG 4.1.6(2) (Alterations to an Area Containing a Primary Function). ADAAG 4.1.6(2) provides that, when an area containing a primary function is altered, an accessible path of travel must be provided to the altered area unless the cost and scope of alterations to provide an accessible path of travel is disproportionate to the overall alterations as determined under criteria established by the Department of Justice. The Department of Justice

regulations for title III of the ADA deem alterations to provide an accessible path of travel disproportionate when the cost exceeds 20 percent of the cost of the overall alterations.<sup>22</sup>

When play areas are altered, the provisions of ADAAG 4.1.6 apply. For example, the swings are replaced in an existing play area that has a sand ground surface. The sand does not have to be replaced with an accessible surface to provide an accessible path of travel to the swings if the cost of altering the ground surface exceeds 20 percent of the cost of replacing the swings. An exception has been added to the final rule to clarify the application of ADAAG 4.1.6 to this situation. The exception is limited to alterations where the play components are altered, but the ground surface is not altered. An accessible ground surface does not have to be provided, unless required by ADAAG 4.1.6(2) (*i.e.*, the ground surface does not have to be altered if the cost exceeds 20 percent of the cost of replacing the play components). The exception exempts operators from having to provide an accessible ground surface not only for accessible routes, but also for clear floor or ground spaces and maneuvering spaces adjacent to the altered play components since it would not be practical to provide discrete spaces of accessible ground surfacing without connecting the spaces with an accessible route.<sup>23</sup>

Normal maintenance activities performed on play areas such as replacing worn ropes or topping off ground surfaces are not considered alterations. However, if the entire ground surface is replaced, the ground surface must comply with the play areas guidelines and provide an accessible route to the required number and types of ground level play components and

<sup>22</sup> See 28 CFR 36.403(f)(1) (<http://www.usdoj.gov/crt/ada/reg3a.html>).

<sup>23</sup> State and local governments who operate play areas have a separate obligation under title II of the ADA to provide program accessibility which may require the removal of architectural barriers in existing facilities. See 28 CFR 35.150 (<http://www.usdoj.gov/crt/ada/reg2.html>).

Private entities who operate play areas have a separate obligation under title III of the ADA to remove architectural barriers in existing facilities where it is readily achievable (*i.e.*, easily accomplishable and able to be carried out without much difficulty or expense). See 28 CFR 36.304 (<http://www.usdoj.gov/crt/ada/reg3a.html>).

Tax credits and deductions are available to private entities for architectural barrier removal in existing facilities. See note 14, *supra*. Federal funds also are available through the Community Development Block Grant Program to remove architectural barriers in existing facilities. See note 15, *supra*. State and local governments may use Community Development Block Grant funds to remove architectural barriers in publicly and privately operated facilities.

<sup>21</sup> For additional guidance, see II-6.2100 of the Department of Justice ADA Title II Technical Assistance Manual Supplement (<http://www.usdoj.gov/crt/ada/taman2up.html>) and III-5.3000 of the Department of Justice ADA Title III Technical Assistance Manual (<http://www.usdoj.gov/crt/ada/taman3.html>)

<sup>20</sup> See note 7, *supra*.



composite play structures. Replacing the entire ground surface would not require an additional number or types of ground level play components to be added, if there was not a sufficient number or types provided to comply with the guidelines prior to the alterations, nor would it require alterations to composite play structures that were not otherwise planned.

*Comment.* Commenters also requested clarification regarding how the guidelines apply to play areas designed and constructed in phases over several years.

*Response.* A provision has been added to the final rule to clarify that where play areas are designed and constructed in phases, the guidelines are to be applied so that when each successive addition is completed, the entire play area complies with all applicable provisions of the guidelines. For example, a play area is built in two phases. In the first phase, there are 10 elevated play components; and 10 elevated play components are added in the second phase for a total of 20 elevated play components. When the first phase is completed, at least 5 elevated play components must be located on an accessible route, and at least 3 ground level play components, including at least 3 different types, must be provided on an accessible route. When the second phase is completed, at least 10 elevated play components must be located on an accessible route, and at least 7 ground level play components, including 4 different types, must be provided on an accessible route. Ramps must be used to connect at least 5 of the elevated play components and transfer systems are permitted to be used to connect the rest of the elevated play components required to be located on an accessible route.

Where ground level play components are added in phases, the additional ground level play components do not have to be located on an accessible route if at least one of each type requirement is met and a sufficient number and types of ground level play components are provided on an accessible route based on the number of elevated play components. For example, a newly constructed play area has two spring rockers and one of the spring rockers is located on an accessible route. Two more spring rockers are later added to the play area. An accessible route is not required to connect to the additional spring rockers, provided that a sufficient number and types of ground level play components are provided on an accessible route based on the number of elevated play components.

### Section-by-Section Analysis

The specific provisions of the play area guidelines and the comments received on each provision are discussed below.

#### 3.5 Definitions

Definitions are added to ADAAG 3.5 (Definitions) for the following terms used in the play area guidelines: amusement attraction, elevated play component, ground level play component, play area, play component, soft contained play structure, and use zone. Several of the definitions are revised in the final rule for clarity.

*Comment.* Commenters questioned the reference to the ASTM F 1487–95 standard in the definition of “play area” in the NPRM. The ASTM standard is a voluntary safety standard for public playground equipment. Commenters questioned whether the play area guidelines would apply if a play area was not designed and constructed in accordance with the ASTM standard.

*Response.* The reference to the ASTM F 1487–95 standard has been removed from the definition of “play area” in the final rule.

*Comment.* Designers and operators requested clarification of the definition of “play component” and how to distinguish between ground level and elevated play components.

*Response.* The definition of “elevated play component” has been modified in the final rule to include the definition of a composite play structure. Appendix notes (A15.6.2 and A15.6.3) have been added to provide guidance on how to distinguish between ground level and elevated play components.

#### 15.6 Play Areas

In the NPRM, the play area guidelines were proposed to be a separate special application section numbered ADAAG 16. In the final rule, the play area guidelines are included in the special application section reserved for recreation facilities and are numbered ADAAG 15.6.<sup>24</sup> The guidelines have been edited and reorganized for clarity. Appendix notes have been added to provide guidance on the guidelines. The appendix notes are advisory only.

##### 15.6.1 General

The play area guidelines apply to play areas designed and constructed for children ages two and over. Where separate play areas are provided within a site for specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with the guidelines. Where play

areas are designed or constructed in phases, the guidelines are to be applied so that when each successive addition is completed, the entire play area complies with all the applicable provisions of the guidelines.

*Comment.* Commenters requested clarification regarding how to apply the guidelines where separate play areas are provided within a site for different age groups.

*Response.* As noted above, the section has been revised in the final rule to clarify that each play area within a site provided for specified age groups must comply with the guidelines.

*Comment.* Commenters representing children with disabilities were concerned that the guidelines do not apply to play areas for children under age two.

*Response.* There is not sufficient information to develop guidelines for play areas for children under age two. Although there are no guidelines for play areas for children under age two, operators of those play areas are subject to all the other requirements of the ADA, including the obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.

##### 15.6.1 Exception 1

Exception 1 is further discussed under General Issues. The exception exempts play areas located in family child care facilities where the proprietor actually resides from the play area guidelines. Family child care facilities must still comply with all the other requirements of the ADA, including the general obligation to provide equal opportunity to individuals with disabilities to enjoy the services of their facilities and to remove architectural barriers in existing facilities where it is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense).<sup>25</sup>

##### 15.6.1 Exception 2

Exception 2 permits operators to relocate play components in existing play areas for the purpose of creating safe use zones. Where the ground surface is not changed or extended for more than one use zone, the guidelines do not apply.

*Comment.* A commenter questioned whether this exception applies when more than one play component is moved. To create safe use zones, usually more than one play component must be moved.

<sup>24</sup> See note 7, *supra*.

<sup>25</sup> See note 21, *supra*.

*Response.* Exception 2 applies regardless of the number of play components moved, provided that the surface is not changed or extended for more than one use zone for each play component moved.

#### 15.6.1 Exception 3

Exception 3 is further discussed under General Issues. The exception provides that where play components are altered and the ground surface is not altered, the ground surface is not required to comply with the guidelines, unless required by ADAAG 4.1.6(2) (Alterations to an Area Containing a Primary Function).

#### 15.6.1 Exception 4

Exception 4 is further discussed under General Issues. The exception exempts amusement attractions in amusement parks and theme parks from the play area guidelines, except the provisions for soft contained play structures. The exception is limited and applies to amusement attractions such as fun houses and barrels. If an amusement park or theme park has an eating place or picnic area that provides commonly used playground equipment, the playground equipment is not considered an amusement attraction and must comply with 15.6. Amusement attractions are not exempt from the other provisions of ADAAG. Operators of amusement parks and theme parks are still subject to the other requirements of the ADA, including the general obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.

#### 15.6.1 Exception 5

Exception 5 exempts play areas from complying with the provisions for protruding objects in ADAAG 4.4 (Protruding Objects). ADAAG 4.4 generally prohibits protrusions along circulation paths from projecting more than 4 inches, if the leading edge is above 27 inches and below 80 inches. ADAAG 4.4 also requires a minimum head clearance of 80 inches. No comments were received on this exception.

#### 15.6.1 Exception 6

Exception 6 has been added to the final rule in response to comments from manufacturers who requested clarification regarding whether ADAAG 4.9 (Stairs) applies to composite play structures. The exception provides that stairs are not required to comply with ADAAG 4.9 since ramps and transfer systems are used to provide access to elevated play components. The

exception also eliminates any potential conflicts between the technical provisions for stairs and transfer systems.

#### 15.6.2 Ground Level Play Components

This section contains the scoping provisions for ground level play components. Ground level play components provided to comply with 15.6.2.1 are permitted to satisfy the number required by 15.6.2.2, if the minimum required types of play components are provided. Where more than one ground level play component is required by 15.6.2.1 and 15.6.2.2, the play components must be integrated in the play area.

*Comment.* A parent of a child with a hearing impairment who has a cochlear implant commented that some play equipment materials such as plastic slides generate static electricity when children move across the surfaces. The static electricity can damage cochlear implants and result in the need to replace them surgically. The commenter recommended that 50 percent of play components be metal.

*Response.* Consistent with the rest of ADAAG, the play area guidelines do not specify the materials to be used in play components. Designers and operators specify materials giving consideration to maintenance, climate, use, cost, and other factors. Manufacturers often add substances to plastics to reduce static electricity. The additives may lose their effectiveness over time in the outdoor environment or compromise the strength of the plastic. The type of clothing worn by a child and the humidity also may affect whether static electricity is generated by plastics. Some operators specify stainless steel slides to prevent or reduce vandalism. However, stainless steel slides are not widely used in warmer climates due to the potential for skin burns.

*Comment.* Commenters requested clarification regarding how to apply the provision that ground level play components required by 15.6.2.1 and 15.6.2.2 must be integrated. They provided examples where passive play components, such as activity panels, are separated from more active play components, such as swings, to ensure safety, and asked whether this type of separation would be considered integrated.

*Response.* The intent of this provision is to ensure that ground level play components which can be accessed by children with disabilities are integrated with other ground level play components. Grouping all ground level play components that can be accessed by children with disabilities in one part

of the play area would not be considered integrated. Where certain types of ground level play components are separated for safe use, the integration provision can still be met. For example, if one part of the play area has activity panels and another part has swings, as long as an accessible route connects to both parts of the play area and at least one activity panel and at least one swing is located on the accessible route, the ground level play components would be integrated.

#### 15.6.2.1 General

This section requires that at least one of each type of ground level play component provided must be located on an accessible route complying with 15.6.4 and must also comply with 15.6.6.

*Comment.* Designers and operators requested clarification regarding distinguishing between the types of ground level play components provided. For example, they asked whether a straight slide would be considered the same type of play component as a spiral slide. Commenters representing children with disabilities emphasized the need to ensure diversity or variety of play experiences for children with disabilities.

*Response.* An appendix note (A15.6.2) has been added to provide guidance on how to distinguish between the types of ground level play components provided. The general experience provided by the play component will distinguish between the types of play components provided. Examples of different types of experiences include rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide would not be considered a different type of play component than a straight slide.

#### 15.6.2.2 Additional Number and Types

This section requires that, where elevated play components are provided, additional ground level play components must be provided. The additional ground level play components must be located on an accessible route complying with 15.6.4 and must also comply with 15.6.6.

*Comment.* The NPRM proposed that the additional number of ground level play components be equal to at least 50 percent of the total number of elevated play components. Commenters considered this number excessive.

*Response.* The regulatory negotiation committee proposed this provision in order to provide additional play opportunities for children with

disabilities at the ground level since only a minimum of 50 percent of elevated play components would be connected by ramps or transfer systems. The regulatory negotiation committee also was concerned that some children with disabilities would be unable to or would choose not to use transfer systems to access elevated play components and wanted to provide additional play opportunities at the ground level for those children. The provision has a significant cost impact on play areas due to the cost of providing the additional ground level play components and, depending on the surface material used, the cost of providing an accessible route to the additional ground level play components.

The provision has been modified in the final rule. Table 15.6.2.2 has been added to the final rule which requires that ground level play components complying with the guidelines be provided in a number equal to at least approximately one-third of the total number of elevated play components. The table also requires that the additional ground level play components include different types of play experiences. The table reduces the cost impact on play areas and ensures that there will be a diversity or variety of play opportunities for children with disabilities at the ground level.

#### 15.6.2.2 Exception

This exception has been modified in the final rule. The exception exempts play areas from having to provide the additional number and types of ground level play components required by 15.6.2.2 if at least 50 percent of the elevated play components are connected by a ramp and at least 3 of the elevated play components connected by the ramp are different types of play components.

*Comment.* The NPRM proposed to exempt play areas from having to provide additional ground level play components if all the elevated play components are connected by a ramp. Designers and operators commented that the proposed exception was too stringent.

*Response.* The exception has been modified in the final rule as discussed above. The exception is intended to encourage designers and operators to connect the number of elevated play components required by 15.6.3 with ramps instead of transfer systems because ramps are the preferred means of access for many children with disabilities.

#### 15.6.3 Elevated Play Components

This section requires that at least 50 percent of elevated play components must be located on an accessible route complying with 15.6.4. Elevated play components connected by a ramp must comply with 15.6.6.

*Comment.* Commenters representing children with disabilities expressed concern that the guidelines do not require elevated play components located on an accessible route to be dispersed or located on different parts of a composite play structure.

*Response.* Dispersion is not specifically required because requiring at least 50 percent of elevated play components to be located on an accessible route should provide for an adequate level of dispersion.

#### 15.6.4 Accessible Routes

This section requires that at least one accessible route complying with ADAAG 4.3 (Accessible Route), as modified by 15.6.4, be provided.

*Comment.* Designers expressed concern that the technical provisions for accessible routes would restrict creativity and innovation in the design of challenging play areas.

*Response.* The technical provisions for accessible routes provide minimum criteria for designers to make play areas accessible to children with disabilities. Consideration should be given to the general layout of the play area, and specifically to integrating elements and spaces that can be accessed by children with disabilities within the area. Designers are not prohibited from providing other circulation paths and spaces that do not conform to the guidelines, if an accessible route is provided. ADAAG 2.2 (Equivalent Facilitation) also allows for departure from specific technical provisions where designs may provide substantially equivalent or greater access.

#### 15.6.4 Exception 1

Exception 1 permits a transfer system to connect elevated play components, except where 20 or more elevated play components are provided, no more than 25 percent of the elevated play components are permitted to be connected by a transfer system. The rest of the elevated play components required to be located on an accessible route must be connected by a ramp.

*Comment.* Some operators and manufacturers requested that the use of transfer systems not be limited based on the number of elevated play components provided. Some commenters representing children with

disabilities requested that transfer systems not be permitted at all.

*Response.* The exception has not been modified in the final rule. The regulatory negotiation committee extensively discussed the issue of when ramps should be required to connect elevated play components. The regulatory negotiation committee considered the cost of ramps in relation to the size of composite play structures, and the potential that ramps might have a negative impact on play value or on the number of play components provided. Although ramps are preferred over transfer systems, transfer systems are usable by some children with disabilities.

*Comment.* Commenters requested clarification regarding how the number of elevated play components would be counted. They asked whether a double or triple slide that is part of a composite play structure would be counted as one elevated play component or more than one elevated play component.

*Response.* An appendix note (A15.6.3) has been added to clarify that a double or triple slide is considered one elevated play component.

#### 15.6.4 Exception 2

Exception 2 permits an elevated play component to connect to another elevated play component in lieu of an accessible route where a transfer system is provided. No comments were received on this exception.

#### 15.6.4 Exception 3

Exception 3 permits platform lifts complying with ADAAG 4.11 (Platform Lifts—Wheelchair Lifts) and applicable State or local codes to be used as part of an accessible route.

*Comment.* Operators considered platform lifts hazardous and difficult to maintain since they must be independently usable.

*Response.* The exception has been retained in the final rule. The exception allows operators the discretion to decide whether a platform lift is appropriate for a specific play area after giving due consideration to the location, level of supervision provided, and other relevant factors.

#### 15.6.4.1 Location

This section provides that accessible routes must be located within the boundary of the play area and must connect ground level play components required by 15.6.2.1 and 15.6.2.2, and elevated play components required by 15.6.3, including their entry and exit points.

*Comment.* Commenters questioned why accessible routes must connect

stairs and exit points at stand alone slides. They maintained that accessible routes at these locations have limited utility because children with disabilities cannot often climb stairs or transfer independently from exit points of slides.

*Response.* This provision is intended to provide children with disabilities a circulation path to a variety of play components without affecting the challenge incorporated in play areas. Some children with disabilities, especially those who use mobility devices that assist in walking or standing, will benefit from an accessible route connecting play components, including stand alone slides. Others may not be able to use certain play components independently, but may enjoy the experience with assistance. An accessible route at exit points allows children with disabilities to negotiate through an accessible surface and to return to mobility devices with dignity.

#### 15.6.4.2 Protrusions

This section prohibits objects from protruding into accessible routes at or below 80 inches above the surface. The provision has been revised in the final rule to apply only to ground level accessible routes in order to permit roofs on elevated play structures lower than 80 inches above the deck or platform.

#### 15.6.4.3 Clear Width

This section specifies the dimensions for the clear width for accessible routes within play areas.

*Comment.* Commenters questioned why a 60 inch minimum clear width is required for ground level accessible routes when the final rule on children's elements did not modify the width of the accessible route for other types of facilities serving children.<sup>26</sup>

*Response.* The ground level accessible route in a play area is unique since the route may be the only area where accessible surfacing is provided. When the accessible route is the only accessible surface, it is likely that children with disabilities will be restricted to that small portion of the play area while other children are not so restricted. Furthermore, 60 inches is the minimum clear width necessary for turning.

*Comment.* Commenters noted that children who use wheelchairs leave their mobility devices when they use transfer systems and therefore the clear width of transfer systems does not need to be the same as the clear width of ramps on elevated accessible routes.

*Response.* An exception has been added to the final rule permitting the clear width of transfer systems connecting elevated play components to be 24 inches minimum.

#### 15.6.4.4 Ramp Slope and Rise

This section specifies the slope and rise of ramps connecting ground level play components and ramps connecting elevated play components.

*Comment.* Commenters wanted more information about the technical provisions for ramps, including landings, handrails, and edge protection.

*Response.* The technical provisions for ramps are in ADAAG 4.8 (Ramps), including provisions for landings, handrails, and edge protection. Some of these provisions are modified by 15.6.4.4.

*Comment.* Designers requested clarification regarding the transition between accessible routes within a play area and accessible routes on a site. They asked if the transition is required to have a 1:16 maximum slope or a 1:12 maximum slope.

*Response.* Transitions at the boundary of play area accessible routes and site accessible routes must comply with ADAAG 4.5.2 (Changes in Level), which provides that changes in level greater than 1/2 inch must comply with ADAAG 4.8 (i.e., 1:12 maximum slope). Where a rubber surface is installed on top of asphalt to provide impact attenuation, the edges of the rubber surface may create a change in level between the adjoining ground surface. Where the change in level is greater than 1/2 inch, a sloped surface with a maximum slope of 1:12 must be provided. Products are commercially available that provide a 1:12 slope at transitions. An appendix note (A15.6.7) has been added to provide guidance on transitions.

*Comment.* A manufacturer preferred limiting the length of ramp runs to 12 feet, instead of limiting the rise of ramps to 12 inches.

*Response.* The regulatory negotiation committee wanted to limit the distance between the ramp and decks or platforms where children gather and interact, and also encourage designers to provide ramps with a lesser slope than the 1:12 maximum. Limiting the rise of ramps to 12 inches allows designers to use different combinations of ramp runs and ramp slopes to reach the same elevation. For example, to reach a 12 inch high deck or platform, a designer could use a 12 foot ramp with the maximum 1:12 slope, or a 14 foot ramp with a less steeper 1:14 slope. If the ramp run is limited to 12 feet, the

designer could only use the maximum 1:12 slope.

#### 15.6.4.5 Handrails

This section specifies dimensions for handrails on ramps provided within play areas. An exception has been revised in the final rule to clarify that handrails are not required at ramps located within ground level use zones and another exception has been added that does not require handrail extensions at the top and bottom of ramps to avoid any potential protrusion into circulation paths, especially on elevated decks or platforms.

#### 15.6.5 Transfer Systems

This section contains technical provisions for transfer systems. The section clarifies that transfer platforms must be located where transfer is intended to be from a wheelchair or other mobility device, and that transfer steps must be located where movement is intended from a transfer platform to a level with elevated play components required to be located on an accessible route. The section also clarifies the orientation of the transfer space. The NPRM requested information regarding the effective placement of transfer supports. Commenters provided some examples of transfer supports designs. An appendix note (A15.6.5) has been added to provide guidance on transfer supports.

#### 15.6.6 Play Components

This section contains technical provisions for ground level play components located on accessible routes and elevated play components connected by ramps. The provisions specify the dimensions for maneuvering space, clear floor or ground space, heights and clearances at play tables, the height of seats and entry points, and transfer supports.

*Comment.* Commenters requested clarification regarding the location of the clear floor or ground spaces and maneuvering spaces, and whether clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap.

*Response.* A specific location has not been designated for the clear floor or ground spaces and maneuvering spaces, except for swings, because each play component may require that the space be placed in a unique location. The maneuvering space for swings must be located immediately adjacent to the swing (see figure 66). Clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap within play areas.

<sup>26</sup> See not 5, *supra*.

*Comment.* The NPRM proposed reach ranges for manipulative or interactive features of play components. Commenters noted that the reach ranges are not consistent with the ADAAG provisions for children's elements and the ASTM F 1487-98 standard. The International Playground Equipment Manufacturers Association recommended a reach range between 9 inches and 48 inches for a side reach, and 20 inches to 36 inches for a forward reach. Commenters questioned how the proposed reach ranges might apply to overhead play components and what provisions would apply to reaches over obstructions. They also questioned applying reach ranges designed to accommodate children who use wheelchairs to play components reached by transfer systems.

*Response.* The reach ranges have been moved to an appendix note (A15.6.6.6) and are advisory only. This is consistent with the action taken in the final rule on children's elements.<sup>27</sup> The regulatory negotiation committee proposed the reach ranges based on the NPRM on children's elements.<sup>28</sup> Comments on that rulemaking and this rulemaking have raised important issues that deserve further research.

*Comment.* Commenters noted that the proposed reach ranges were not adequate for play tables such as sand and water tables. These play components necessitate a reach over an obstruction and the NPRM did not include a provision for knee and toe clearance to facilitate this type of reach.

*Response.* A provision has been added to the final rule to address the concerns. Although the reach ranges are advisory only, knee and toe clearance for play tables have been included in the final rule. These clearances are consistent with the provisions in ADAAG for children's elements such as lavatories. An exception provides that play tables designed for children ages 5 and under are not required to provide knee and toe clearance if a parallel approach to the table is provided.

#### 15.6.7 Ground Surfaces

This section provides that ground surfaces along accessible routes, clear floor or ground spaces, and maneuvering spaces within play areas must comply with ADAAG 4.5.1 (Ground or Floor Surfaces—General) and the ASTM F 1951-99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment. The ground surfaces must be inspected

and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951-99 standard. If located within use zones, the ground surfaces also must comply with the ASTM F 1292-99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment. The NPRM referenced the ASTM PS 83 Provisional Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment. The ASTM PS 83 standard has been finalized as the ASTM F 1951-99 standard. Minor editorial changes were made between the provisional standard and the final standard.

*Comment.* Commenters requested more information about the ASTM PS 83 standard.

*Response.* The ASTM standards are copyrighted private consensus standards and are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, telephone (610) 832-9585. The cost of the ASTM F 1951-99 standard is \$30. The ASTM standards may be ordered online from ASTM (<http://www.astm.org>). An appendix note (A15.6.7) has been added to provide guidance on the ASTM F 1951-99 standard.

*Comment.* Some commenters were concerned that engineered wood fiber products would not provide an adequate accessible surface. Other commenters reported positive experiences with engineered wood fiber products in play areas used by children with disabilities. Commenters also requested that the Access Board publish a list of accessible ground surfaces.

*Response.* Some engineered wood fiber products have been tested and meet the ASTM F 1951-99 standard, and others have not. The fact that a specific product has been tested and meets that ASTM F 1951-99 standard does not necessarily mean that all other similar products will meet the standard. Engineered wood fiber surfaces will require frequent maintenance to comply with the ASTM F 1951-99 standard because of surface displacement due to user activity or looseness due to moisture. The settling of engineered wood fiber may also affect the distance between the ground surface and transfer platforms. The final rule requires ground surfaces to be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951-99 standard. The Department of Justice regulations for titles II and III of the ADA also require

public and private entities to maintain accessible features.<sup>29</sup>

Designers and operators are likely to choose materials that best serve the specific needs of each play area. The type of material selected will affect the frequency and cost of maintenance. The existence of the ASTM F 1951-99 standard should hasten the development of new materials and improvements in existing products. The Access Board plans to develop technical assistance materials on accessible ground surfaces. Based on concerns expressed by commenters and the fact that the ASTM F 1951-99 standard is new, the Access Board will closely monitor how well the standard provides for accessible surfaces.

#### 15.6.8 Soft Contained Play Structures

This section requires an accessible route to serve entry points of soft contained play structures. Where three or fewer entry points are provided, at least one must be located on an accessible route. Where four or more entry points are provided, at least two must be located on an accessible route. Accessible routes must comply with ADAAG 4.3 (Accessible Route). An exception provides that transfer systems complying with 15.6.5 and platform lifts complying with ADAAG 4.11 (Platform Lifts—Wheelchair Lifts) and applicable State or local codes are permitted to be used as part of an accessible route. There were very few comments on this section and no changes have been made in the final rule.

### Regulatory Process Matters

#### *Executive Order 12866: Regulatory Planning and Review*

This final rule is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget. An economic assessment of the potential costs and benefits of the final rule has been prepared and has been placed in the docket for public inspection. The economic assessment is also available on the Access Board's Internet site (<http://www.access-board.gov/play/assess.htm>). The economic assessment is summarized below.

#### Number and Size of Play Areas Affected

Ten major business and government categories are identified that are likely to own or operate play areas. They include eating places; hotels and motels; sporting and recreational camps; recreational vehicle parks and

<sup>27</sup> See note 5, *supra*.

<sup>28</sup> See 61 FR 37964 (July 22, 1996).

<sup>29</sup> See 28 CFR 35.133 (<http://www.usdoj.gov/crt/ada/reg2.html>) and 28 CFR 26.211 (<http://www.usdoj.gov/crt/ada/reg3a.html>).

campsites; miscellaneous amusement and recreation facilities; public elementary and middle schools; private (nonsectarian) elementary and middle schools; child care facilities; civic, social and fraternal associations; and municipal and state parks. For each category, lower and upper bound estimates are made of the number of establishments that are likely to have commonly used playground equipment, and the annual number of playgrounds that are expected to be constructed or replaced. The estimates are further broken down by play area size (small, medium, and large). Table 1 shows the results of these estimates. The estimates do not include soft contained play structures because the guidelines are not expected to have a cost impact on those play areas.

TABLE 1.—NUMBER AND SIZE OF PLAY AREAS AFFECTED ANNUALLY BY GUIDELINES

Play area size	Lower bound estimates	Upper bound estimates
Small .....	7,800	10,400
Medium .....	6,400	8,300
Large .....	3,200	5,200
Total Play Areas	17,400	23,900

#### Baseline

To estimate the incremental costs of the guidelines, a baseline was established against which the cost of play areas designed and constructed in accordance with the guidelines can be compared. The baseline is a reasonable forecast of how play areas would be designed and constructed in the future in the absence of the guidelines. The following factors were considered in establishing the baseline: evolution of industry standards and practices; other civil rights laws and regulations guaranteeing the rights of individuals with disabilities (*i.e.*, Section 504 of the Rehabilitation Act, and Individuals with Disabilities Education Act); and the degree of compliance with those civil rights laws and regulations.

Beginning in 1990, the American Society of Testing and Materials (ASTM) established several subcommittees to develop voluntary standards for play areas. These standards include: ASTM F 1487–99 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (initially issued in 1993); ASTM PS 83–97 Provisional Standard Specification for Determination of

(issued in 1997); ASTM F 1951–99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (issued in 1999); and ASTM F 1918–98 Standard Safety Performance Specification for Soft Contained Play Equipment (issued in 1998). Although these ASTM standards are primarily concerned with safety, they also include technical provisions for accessible features such as accessible routes, transfer systems, ramps, and ground surfaces. The ASTM standards are voluntary, but most manufacturers follow them. It is common today for playground equipment manufacturers to incorporate as a standard feature on composite play structures a transfer system to at least one deck and to provide at least one activity panel and slide on that deck. Playground equipment manufacturers and ground surface material suppliers advertise and promote the accessibility of their products through their catalogues and web sites.

Public schools and parks have had an obligation since the 1970's under Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act to provide for accessibility in new construction and alterations. Public schools and parks must have Section 504 coordinators who are responsible for ensuring among other things that these accessibility requirements are met. These other civil rights laws and regulations have been enforced to require public schools and parks to provide an accessible route through play areas to a range of play components.

With the increased availability of accessible playground equipment and accessible ground surfaces in the marketplace as a result of the ASTM standards and a long history of coverage by other civil rights laws and regulations, a high degree of compliance with respect to providing for accessibility is expected by public schools and parks when designing and constructing playground equipment. Private entities covered by title III of the ADA do not have as long a history of coverage by civil rights laws and regulations guaranteeing the rights of individuals with disabilities. However, larger private entities that operate play areas are more likely to know about developments in the marketplace and the availability of accessible playground equipment and accessible surface materials, and are more likely to purchase playground equipment and surface materials that provide for accessibility. Smaller private entities that operate play areas may not be as

knowledgeable about these matters and have a lesser degree of compliance.

Three models representing a small, medium, and large play area were developed based on the above factors. For each model, equipment and ground surface costs are estimated for a baseline design and a design complying with the guidelines. The primary difference between baseline designs and the guidelines designs involves the number of ground level and elevated play components that are located on an accessible route, which in turn affects how much accessible ground surface is provided and the extent to which transfer systems and ramps are provided. Generally, the baseline design assumes that a smaller number of ground level play components are located on accessible routes than required by the guidelines and that a transfer system is provided only to one deck on a composite play structure, making fewer elevated play components accessible than required by the guidelines.

Different ground surface materials were used for each model. For the small play area, the baseline design used a loose fill surface such as sand or wood chips for the entire play area; and the guidelines design used two options: An engineered wood fiber surface for the entire play area (option 1), and a combination of rubber surface along accessible routes, clear floor or ground spaces, and maneuvering spaces and a loose fill surface for the rest of the play area (option 2).<sup>30</sup> This is a change from the assumption made in the economic assessment for the NPRM. A loose fill surface was used for the baseline design for the small play area in the economic assessment for the final rule based on comments from child care facilities, which have a large number of small play areas, stating that they would not use an engineered wood fiber surface, or a combination of rubber surface and loose fill surface in the absence of the guidelines. For the medium and large play areas, both the baseline designs and the guidelines designs used two options: An engineered wood fiber surface for the entire play area (option 1) and a combination of rubber surface along accessible routes, clear floor or ground spaces, and maneuvering spaces and a loose fill surface for the rest of the play area (option 2) because public schools and parks represent a large number of medium and large play areas and it is assumed that these facilities

<sup>30</sup> Rubber surface was used along accessible routes, clear floor or ground spaces, and maneuvering spaces. The rubber surface was designed to be as uninterrupted as possible to avoid potential tripping hazards.

would use surfaces complying with the ASTM F 1951-99 standard in the absence of the guidelines based on the factors discussed above. This is the same assumption made in the economic assessment for the NPRM. The comments did not question this assumption. Some owners and operators, especially in urban areas,

have chosen to use a rubber surface for the entire play area in the absence of the guidelines. The economic assessment overestimates the incremental surface costs for those play areas.

#### Incremental Equipment and Ground Surface Costs

Equipment and ground surface costs for the baseline designs and the

guidelines designs are presented in Table 2. For equipment, installation is estimated at 20 percent to 40 percent of equipment cost. Ground surface costs reflect regional variations in labor and materials.

TABLE 2.—EQUIPMENT AND GROUND SURFACE COSTS

Play area size	Baseline		Guidelines		Percent change
	Low	High	Low	High	
Surface Option 1: Engineered Wood Fiber					
Small .....	\$11,828	\$15,345	\$12,128	\$16,295	2.5–6.2
Medium .....	18,740	27,362	20,636	30,032	9.8–10.1
Large .....	42,634	57,932	51,863	68,284	17.9–21.6
Surface Option 2: Rubber & Loose Fill					
Small .....	\$11,828	\$15,345	\$12,775	\$17,560	8.0–14.4
Medium .....	18,537	25,992	22,669	33,845	22.3–30.2
Large .....	43,511	57,688	54,969	74,109	26.3–28.5

The sources of the cost increases are discussed below.

#### Small Play Area

For the baseline design, the small play area has a loose fill surface; a composite play structure with 4 elevated play components on a single deck; a transfer platform and transfer steps to the deck; and 4 ground level play components. The guidelines do not result in any equipment changes. For the guidelines design the loose fill surface is replaced entirely with an engineered wood fiber surface (option 1) or a rubber surface (option 2) is installed along accessible routes, clear floor or ground spaces, and maneuvering spaces at certain ground level play components. The cost increase for the engineered wood fiber surface (option 1) is \$300 to \$950, and for the rubber surface (option 2) is \$946 to \$2,215.

#### Medium Play Area

For the baseline design, the medium play area has an engineered wood fiber surface (option 1) or a combination of rubber surface and loose fill surface (option 2); a composite play structure with 10 elevated play components on multiple decks at varying heights; a transfer platform and transfer steps that connect to a 36 inch high deck on which

there are 3 elevated play components; and 3 ground level play components. For the guidelines design, the following are added: A 48 inch high deck (2 elevated play components are relocated from the 60 inch high deck to the 48 inch high deck); a transfer step to connect the 36 high and 48 inch high decks, and 1 ground level play component. The cost of these equipment changes is \$1,680 to \$1,960. The use zones are enlarged by 122 square feet as a result of the equipment changes. The cost for additional engineered wood fiber surface (option 1) for the expanded use zones is \$216 to \$710. The cost for additional rubber surface (option 2) for accessible routes, clear floor or ground spaces, and maneuvering spaces, and for loose fill for the expanded use zones is \$2,452 to \$5,893.

#### Large Play Area

For the baseline design, the large play area has an engineered wood fiber surface (option 1) or a combination rubber surface and loose fill surface (option 2); 20 elevated play components on multiple decks at varying heights; a transfer platform and transfer steps that connect to a 36 inch high deck on which there are 4 elevated play components (one of the elevated play components is a swinging bridge which connects to

another 36 inch high deck with 2 more elevated play components); and 6 ground level play components. For the guidelines design, the following are added: An earthen berm and ramp to connect to another 36 inch high deck which is extended to connect to the ramp (this deck has 5 elevated play components); and 2 ground level play components. The cost of these equipment changes is \$9,039 to \$9,821. The use zones are enlarged by 94 square feet as a result of the equipment changes. The cost for additional engineered wood fiber surface (option 1) for the expanded use zones is \$190 to \$621. The cost for additional rubber surface (option 2) for accessible routes, clear floor or ground spaces, and maneuvering spaces, and for loose fill for the expanded use zones is \$2,419 to \$6,690.

#### Incremental Maintenance Costs (Savings)

Maintenance costs are estimated for the different ground surfaces in the baseline designs and guidelines designs for the model play areas. Maintenance activities include inspecting surfaces; raking and leveling surfaces; and topping off surfaces. Typical maintenance frequencies are presented in Table 3.

TABLE 3.—TYPICAL MAINTENANCE FREQUENCIES

Maintenance activity	Loose fill	Engineered wood fiber	Rubber
Inspection .....	Daily to Weekly .....	Daily to Weekly .....	Weekly.
Rake & Level .....	Daily to Weekly .....	Weekly to as Required .....	Not Required.

TABLE 3.—TYPICAL MAINTENANCE FREQUENCIES—Continued

Maintenance activity	Loose fill	Engineered wood fiber	Rubber
Top Off .....	1 to 3 years .....	3 years .....	Not Required.

Source: Henderson, Walter. Catching Kids When They Fall: Guidelines to Choosing a Playground Surface, *Parks & Recreation*, April 1997, pp. 84–92.

To aggregate routine maintenance costs with the one-time capital costs for equipment and ground surfaces, the maintenance costs are expressed as the present value of the annual maintenance costs for 15 years, discounted at a 7 percent rate of return. The incremental maintenance costs for the guidelines designs compared to the baseline designs for the model play areas are presented in Table 4.

TABLE 4.—INCREMENTAL MAINTENANCE COSTS (SAVINGS)

Play area size	Surface option 1: Engineered wood fiber	Surface option 2: Rubber & loose fill
Small .....	(\$490)	(\$1,200)
Medium .....	1,170	(2,980)
Large .....	900	(4,810)

For small play areas, using an engineered wood fiber surface (option 1) or a combination of rubber surface and loose fill surface (option 2) will result in a reduction in maintenance costs compared to an all loose fill surface over the life cycle of the play area. For medium and large play areas, using a combination of rubber surface and loose fill surface (option 2) will result in a reduction in maintenance costs over the life cycle of the play area.

Aggregate Incremental Costs for Equipment, Ground Surface, and Maintenance

Table 5 combines the incremental changes in equipment and ground surface costs from Table 2 and the incremental changes in maintenance costs from Table 4 to yield the aggregate incremental costs of the guidelines. The mid-point of the cost ranges in Table 2 are used to simplify the aggregation of the costs.

TABLE 5.—AGGREGATE INCREMENTAL COSTS (SAVINGS)

Play area size	Low	High
<b>Surface Option 1: Engineered Wood Fiber</b>		
Small .....	(\$190)	\$460
Medium .....	3,100	3,800
Large .....	10,100	11,300

TABLE 5.—AGGREGATE INCREMENTAL COSTS (SAVINGS)—Continued

Play area size	Low	High
<b>Surface Option 2: Rubber &amp; Loose Fill</b>		
Small .....	(260)	1,000
Medium .....	1,200	4,900
Large .....	6,600	11,600

#### Total Annual Costs of Guidelines

The total annual costs of the guidelines are the sum of the social costs and the direct costs. The lower and upper bound estimates of the total annual costs are presented in Table 6. Generally, as the cost of a product goes up, society consumes less of the product. Since the guidelines will increase the cost of designing and constructing play areas, it is assumed that the guidelines will result in fewer or smaller play areas built in the future. The loss of play opportunities resulting from fewer or smaller play areas built is the social costs of the guidelines. The social costs are estimated by making assumptions about society's elasticity of demand for play areas and using traditional economic analysis. The direct costs are the aggregate increase in the annual cost of play areas that are designed and constructed after the guidelines are adopted as standards by the Department of Justice.

TABLE 6.—TOTAL ANNUAL COSTS OF GUIDELINES  
[\$ in millions]

All play areas	Surface option 1: Engineered wood fiber	Surface option 2: Rubber & loose fill
<b>Social Costs</b>		
Low .....	\$8	\$3
High .....	12	15
<b>Direct Costs</b>		
Low .....	\$29	\$18
High .....	61	69
<b>Total Annual Costs</b>		
Low .....	\$37	\$21
High .....	73	84

#### Benefits of Guidelines

The guidelines will make play areas accessible to 5.1 million children with disabilities, between the ages of 3 and 14.<sup>31</sup> Parents and other adults with disabilities who supervise children will be able to accompany the children when they visit play areas. Parents of children with disabilities will benefit from lower travel costs to take their children to accessible play areas. Businesses that provide play areas as part of their facilities may benefit from increased profits as families with individuals with disabilities are more likely to patronize their establishments. Children with disabilities will benefit from increased opportunities to play and to have social interaction with other children. Children without disabilities may also benefit from this diversity. It is not feasible to quantify these benefits and compare them to the costs of the guidelines.

Not all government policies are based on maximizing economic efficiency. Even when the market is operating efficiently, there may be groups or individuals who are subject to discriminatory practices and remain "under-served." The Americans with Disabilities Act is a civil rights law that was enacted by overwhelming bipartisan majorities in Congress and reflects the societal decision to eliminate the various forms of discrimination continually encountered by individuals with disabilities, including the discriminatory effects of architectural barriers. Traditional cost-benefit analysis is deficient when it comes to measuring civil rights benefits and making judgements about fairness or equity.

In the opinion of the Access Board, the civil rights benefits of the guidelines in ensuring that children with disabilities, and parents and other adults with disabilities who supervise children on play areas, have an equal opportunity to use and enjoy play areas justify the costs of the guidelines.

<sup>31</sup> Bureau of the Census, Americans with Disabilities: 1994–95—Table 2 (<http://www.census.gov/hhes/www/disable/sipp/disab9495/ds94t2.html>). The data provided does not allow for an exact measure of the 2 to 12 years age group.



Regulatory Flexibility Act

The final regulatory flexibility analysis required by the Regulatory Flexibility Act has been performed in conjunction with the preparation of the preamble and economic assessment for the final rule. The analysis is summarized below.

Need for, and Objectives of, Guidelines

The Access Board is required to issue accessibility guidelines under the Americans with Disabilities (ADA) to ensure that new construction and alterations of facilities covered by titles II and III of the law are readily accessible to and usable by individuals with disabilities. Play areas are among the facilities covered by titles II and III of the ADA. Play areas have unique features that are not adequately addressed by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The play area guidelines will amend ADAAG to include scoping and technical provisions for ground level and elevated play components, accessible routes, ramps and transfer systems, ground surfaces, and soft contained play structures.

Significant Issues Raised by Public Comments

The following significant issues were raised by the comments.

Questioning of Statutory Requirement

Commenters questioned why each newly constructed play area must be accessible. As an alternative, they suggested that: One accessible play area per region be provided; play areas be modified for accessibility as needed; and subsidies be provided for making play areas accessible. The ADA is a civil rights law that ensures individuals with disabilities the basic right to use and enjoy goods and services made available to the public. The ADA specifically requires all newly constructed facilities to be accessible. It is more cost effective to incorporate accessible design into the construction of new facilities than to modify facilities afterwards to provide for accessibility. As discussed in the preamble to the final rule, tax credits

and tax deductions are available to private entities to remove architectural barriers in existing facilities.<sup>32</sup> In addition, federal funds are available through the Community Development Block Grant Program for removing architectural barriers in existing facilities.<sup>33</sup>

Requests for Exemptions From Guidelines

Child care facilities claimed that the cost of the guidelines would be prohibitive, and requested that carrying or lifting be permitted as an alternative to accessibility or that play areas in child care facilities for children ages 5 and under be exempt from the guidelines. It has been a long standing interpretation of civil rights laws for individuals with disabilities that carrying and lifting are ineffective and unacceptable methods for providing accessibility.<sup>34</sup> The economic assessment shows that the incremental capital and maintenance costs of the guidelines over a 15 year life cycle for a small play area that may be typically found in a child care facility ranges from a cost savings of \$190 to a cost increase of \$460 for a play area with an engineered wood fiber surface, and from a cost savings of \$260 to a cost increase of \$1,000 for a play area with a combination rubber and loose fill surface. Tax credits and tax deductions are available to small businesses for architectural barrier removal.<sup>35</sup> Federal funds also are available through the Community Development Block Grant Program to remove architectural barriers in existing facilities. State and local governments may use these funds to remove architectural barriers in existing play areas in publicly operated and privately operated child care facilities.<sup>36</sup> An exception has been added to the final rule that exempts family child care facilities where the proprietor actually resides from the play area guidelines.

Amusement parks and theme parks requested that amusement attractions and amusement rides be exempt from the play area guidelines. An exception has been added to the final rule that exempts amusement attractions located

in amusement parks and theme parks from the play area guidelines, except for soft contained play structures. The exception is limited and applies to amusement attractions such as fun houses and barrels. Amusement rides are the subject of a separate rulemaking.<sup>37</sup>

Several commenters expressed concerns regarding application of the guidelines to play areas with unique designs and features, and some suggested that exceptions be made for such play areas. The concerns are addressed in the preamble to the final rule under General Issues, Unique Play Areas.

Requests for Reduced Scoping

Commenters requested that the scoping provision, which requires additional numbers of ground level play components located on an accessible route based on the number of elevated play components provided, be reduced. The scoping was reduced in the final rule from 50 percent to approximately one-third. A minimum number of types of ground level play components was specified to ensure a diversity or variety of play opportunities for children with disabilities at the ground level.

Requests for Clarification of Application of the Guidelines to Alterations and Additions

Commenters requested clarification regarding how the play area guidelines apply to alterations and additions. Specific provisions have been added to the final rule in 15.6.1 and 15.6.1 Exception 3 in response to the comments that provide the requested clarification. The provisions are further discussed in the preamble under General Issues, Alterations and Additions.

Number of Small Entities Affected by Guidelines

A description of and estimate of the number of small entities that will be affected by the guidelines is addressed in chapter 3 of the economic assessment. Table 7 presents a summary of the information.

TABLE 7.—NUMBER OF SMALL ENTITIES AFFECTED BY GUIDELINES

SIC	Category	Estimated establishments in 1999	Estimated establishments with play areas	
			Low	High
5812 .....	Eating Places .....	420,000	8,400	21,000
7011 .....	Hotels & Motels .....	47,000	940	2,300
7032 .....	Sporting & Recreational Camps .....	3,600	360	900

<sup>32</sup> See note 14, *supra*.

<sup>33</sup> See note 15, *supra*.

<sup>34</sup> See note 16, *supra*.

<sup>35</sup> See note 14, *supra*.

<sup>36</sup> See note 15, *supra*.

<sup>37</sup> See note 7, *supra*.

TABLE 7.—NUMBER OF SMALL ENTITIES AFFECTED BY GUIDELINES—Continued

SIC	Category	Estimated establishments in 1999	Estimated establishments with play areas	
			Low	High
7033 .....	Recreational Vehicle Parks & Campsites .....	7,000	2,800	4,200
7999 .....	Miscellaneous Amusement & Recreation .....	32,000	3,200	8,000
n/a .....	Public Elementary & Middle Schools .....	65,000	52,000	65,000
n/a .....	Private Elementary & Middle Schools .....	5,500	4,400	5,500
8351 .....	Child Day Care Services .....	102,000	92,000	102,000
8641 .....	Civic, Social, & Fraternal Associations .....	3,700	740	1,900
n/a .....	Municipal & State Parks .....	110,000	33,000	67,000

The number of public elementary and middle schools, and municipal and State parks also includes large entities.

#### Reporting and Recordkeeping Requirements

There are no reporting and recordkeeping requirements.

#### Steps Taken to Minimize Significant Economic Impact on Small Entities

In addition to the exceptions discussed above for family child care facilities and amusement attractions, and the reduced scoping for additional ground level play components, there are other provisions in the play area guidelines that minimize the significant economic impact on small entities. For small and medium size play areas with less than 20 elevated play components, transfer systems are permitted instead of ramps to provide an accessible route to at least 50 percent of the elevated play components. For small play areas with less than 1,000 square feet, a reduced clear width is permitted on accessible routes. The scoping and technical provisions in the play area guidelines are based on the consensus recommendations of a regulatory negotiation committee that represented the interests of all the parties affected by the guidelines. The guidelines will provide a minimum level of accessibility to play areas for individuals with disabilities and ensure that newly constructed and altered play areas meet the accessibility requirements of the ADA.

The only other significant alternative that would minimize the significant economic impact of the guidelines on small entities and was not accepted involved eliminating or further limiting the use of ramps to provide access to larger composite play structures with 20 or more elevated play components. Some children with disabilities will not be able to or will choose not to use transfer systems to access elevated play components. Ramps are preferred over transfer systems for providing access to play areas. Eliminating or further

limiting the use of ramps to provide access to larger composite play structures would provide a lower level of access to children with disabilities and further limit their opportunities to interact and socialize with other children.

#### Technical Assistance

The Access Board will provide technical assistance materials to help small entities understand the scoping and technical provisions of the play area guidelines. The Access Board also has accessibility specialists who can answer questions about the guidelines. Information on how to contact the Access Board is provided at the beginning of this document.

#### Executive Order 13132: Federalism

The final rule is issued under the authority of the Americans with Disabilities Act. Ensuring the civil rights of groups who have experienced discrimination has long been recognized as a responsibility of the Federal government. The Americans with Disabilities Act was enacted "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities."<sup>38</sup> The final rule adheres to fundamental federalism principles and policy making criteria set forth in Executive Order 13132. The Access Board has consulted with State and local governments throughout the rulemaking process, including convening an advisory committee, establishing a regulatory negotiation committee, and holding public hearings. The interests of State and local governments were represented in the rulemaking process by National Association of Counties, National Association of Elementary School Principals, National League of Cities, and National Recreation and Park Association, all of whom were members of the regulatory negotiation committee that developed the proposed rule. The Access Board has made changes to the

proposed rule based on public comments which are discussed in the preamble to the final rule.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce any statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the final rule is issued under the authority of the Americans with Disabilities Act, which establishes civil rights protections for individuals with disabilities, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

#### List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Incorporation by reference, Individuals with disabilities, Transportation.

#### Thurman M. Davis, Sr.,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, part 1191 of Title 36 of the Code of Federal Regulations is amended as follows:

#### PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

**Authority:** 42 U.S.C. 12204.

2. Appendix A to Part 1191 is amended as follows:

a. By revising pages i, ii, 2, 3, 4, and 76 and by adding pages 1A, 4A, and 77 through 81 as set forth below.

b. In the appendix to Appendix A by adding pages A22 through A25 as set forth below.

The revisions and additions read as follows:

<sup>38</sup> 42 U.S.C. 12101(b)(2).

**Appendix A to Part 1191—Americans  
with Disabilities Act (ADA)  
Accessibility Guidelines for Buildings  
and Facilities**

\*   \*   \*   \*   \*

BILLING CODE 8150-01-P

**ADA ACCESSIBILITY GUIDELINES  
FOR BUILDINGS AND FACILITIES  
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**2.3 Incorporation by Reference.**

**2.3.1 General.** The standards listed in 2.3.2 are incorporated by reference in this document. The Director of the Federal Register has approved these standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**2.3.2 Referenced Standards.** The specific edition of the standards listed below are referenced in this document. Where differences occur between this document and the referenced standards, this document applies.

**2.3.2.1 ASTM.** Copies of the referenced standards may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (<http://www.astm.org>).

ASTM F 1292-99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 15.6.7.2 Ground Surfaces, Use Zones).

ASTM F 1487-98 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see 3.5 Definitions, Use Zone).

ASTM F 1951-99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 15.6.7.1 Ground Surfaces, Accessibility).

## 3.0 Miscellaneous Instructions and Definitions

### 3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

**3.1 Graphic Conventions.** Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

**3.2 Dimensional Tolerances.** All dimensions are subject to conventional building industry tolerances for field conditions.

**3.3 Notes.** The text of these guidelines does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix.

**3.4 General Terminology.**

comply with. Meet one or more specifications of *these guidelines*.

if, if ... then. Denotes a specification that applies only when the conditions described are present.

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

**3.5 Definitions.**

**Access Aisle.** An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

**Accessible.** Describes a site, building, facility, or portion thereof that complies with *these guidelines*.

**Accessible Element.** An *element* specified by *these guidelines* (for example, telephone, controls, and the like).

**Accessible Route.** A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, *crosswalks at vehicular ways*, walks, ramps, and lifts.

**Accessible Space.** Space that complies with *these guidelines*.

**Adaptability.** The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of *individuals with or without disabilities* or to accommodate the needs of persons with different types or degrees of disability.

**Addition.** An *expansion, extension, or increase in the gross floor area of a building or facility*.

**Administrative Authority.** A governmental agency that adopts or enforces regulations and *guidelines* for the design, construction, or alteration of buildings and facilities.

**Alteration.** An *alteration is a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

**Amusement Attraction.** Any facility, or portion of a facility, located within an amusement park

**3.5 Definitions.**

or theme park which provides amusement without the use of an amusement device. Examples include, but are not limited to, fun houses, barrels, and other attractions without seats.

**Area of Rescue Assistance.** An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.

**Assembly Area.** A room or space accommodating a group of individuals for recreational, educational, political, social, civic, or amusement purposes, or for the consumption of food and drink.

**Automatic Door.** A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

**Building.** Any structure used and intended for supporting or sheltering any use or occupancy.

**Circulation Path.** An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

**Clear.** Unobstructed.

**Clear Floor Space.** The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.

**Closed Circuit Telephone.** A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.

**Common Use.** Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless

shelter, the occupants of an office building, or the guests of such occupants).

**Cross Slope.** The slope that is perpendicular to the direction of travel (see running slope).

**Curb Ramp.** A short ramp cutting through a curb or built up to it.

**Detectable Warning.** A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.

**Egress, Means of.** A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.

**Element.** An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

**Elevated Play Component.** A play component that is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity.

**Entrance.** Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s) and the hardware of the entry door(s) or gate(s).



**3.5 Definitions.**

**Facility.** All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

**Ground Floor.** Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.

**Ground Level Play Component.** A play component that is approached and exited at the ground level.

**Mezzanine or Mezzanine Floor.** That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.

**Marked Crossing.** A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

**Multifamily Dwelling.** Any building containing more than two dwelling units.

**Occupiable.** A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

**Operable Part.** A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, push button, handle).

**Path of Travel.** (Reserved).

**Play Area.** A portion of a site containing play components designed and constructed for children.

**Play Component.** An element intended to generate specific opportunities for play, socialization, or learning. Play components may be manufactured or natural, and may be stand alone or part of a composite play structure.

**Power-assisted Door.** A door used for human passage with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

**Private Facility.** A place of public accommodation or a commercial facility subject to title III of the ADA and 28 CFR part 36 or a transportation facility subject to title III of the ADA and 49 CFR 37.45.

**Public Facility.** A facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR part 35 or to title II of the ADA and 49 CFR 37.41 or 37.43.

**Public Use.** Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

**Ramp.** A walking surface which has a running slope greater than 1:20.

**Running Slope.** The slope that is parallel to the direction of travel (see cross slope).

**Service Entrance.** An entrance intended primarily for delivery of goods or services.

**Signage.** Displayed verbal, symbolic, tactile, and pictorial information.

**Site.** A parcel of land bounded by a property line or a designated portion of a public right-of-way.

**Site Improvement.** Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

**Sleeping Accommodations.** Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.

### 3.5 Definitions.

**Soft Contained Play Structure.** A play structure made up of one or more components where the user enters a fully enclosed play environment that utilizes pliable materials (e.g., plastic, netting, fabric).

**Space.** A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

**Story.** That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

**Structural Frame.** The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

**TDD.** (Telecommunication Devices for the Deaf). See text telephone.

**TTY (Tele-Typewriter).** See text telephone.

**Tactile.** Describes an object that can be perceived using the sense of touch.

**Technically Infeasible.** See 4.1.6(1)(j) EXCEPTION.

**Text Telephone (TTY).** Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. Text telephones are also called TTYs, an abbreviation for tele-typewriter.

**Transient Lodging.\*** A building, facility, or portion thereof, excluding inpatient medical care facilities and residential facilities, that contains sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.

**Use Zone.** The ground level area beneath and immediately adjacent to a play structure or equipment that is designated by ASTM F 1487 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see 2.3.2) for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting the equipment.

**Vehicular Way.** A route intended for vehicular traffic, such as a street, driveway, or parking lot.

**Walk.** An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

**12.6 Visible Alarms and Telephones**

back support (e.g., attachment to wall). The structural strength of the bench attachments shall comply with 4.26.3.

(7) Storage. Fixed or built-in storage facilities, such as cabinets, shelves, closets, and drawers, shall contain storage space complying with 4.25.

(8) Controls. All controls intended for operation by inmates shall comply with 4.27.

(9) Accommodations for persons with hearing impairments required by 12.4.3 and complying with 12.6 shall be provided in accessible cells or rooms.

**12.6 Visible Alarms and Telephones.** Where audible emergency warning systems are provided to serve the occupants of holding or housing cells or rooms, visual alarms complying with 4.28.4 shall be provided. Where permanently installed telephones are provided within holding or housing cells or rooms, they shall have volume controls complying with 4.31.5.

EXCEPTION: Visual alarms are not required where inmates or detainees are not allowed independent means of egress.

<b>13.</b>	<b>RESIDENTIAL HOUSING. (Reserved).</b>
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<b>14.</b>	<b>PUBLIC RIGHTS-OF-WAY. (Reserved).</b>
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<b>15.</b>	<b>RECREATION FACILITIES.</b>
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**15.1 Amusement Rides. (Reserved).**

**15.2 Boating Facilities. (Reserved).**

**15.3 Fishing Piers and Platforms. (Reserved).**

**15.4 Golf. (Reserved).**

**15.5 Miniature Golf. (Reserved).**

**15.6 Play Areas.**

**15.6.1\* General.** Newly designed and newly constructed play areas for children ages 2 and over and altered portions of existing play areas shall comply with the applicable provisions of section 4, except as modified or otherwise provided by this section. Where separate play areas are provided within a site for specified age groups, each play area shall comply with this section. Where play areas are designed or constructed in phases, this section shall be applied so that when each successive addition is completed, the entire play area complies with all the applicable provisions of this section.

EXCEPTION 1: Play areas located in family child care facilities where the proprietor actually resides shall not be required to comply with 15.6.

EXCEPTION 2: Where play components are relocated in existing play areas for the purpose of creating safe use zones, 15.6 shall not apply, provided that the ground surface is not changed or extended for more than one use zone.

EXCEPTION 3: Where play components are altered and the ground surface is not altered, the ground surface shall not be required to comply with 15.6.7, unless required by 4.1.6(2).

EXCEPTION 4: The provisions of 15.6.1 through 15.6.7 shall not apply to amusement attractions.

EXCEPTION 5: Compliance with 4.4 shall not be required within the boundary of the play area.

EXCEPTION 6: Stairs shall not be required to comply with 4.9.

**15.6.2\* Ground Level Play Components.**

Ground level play components shall be provided in the number and types required by 15.6.2.1 and 15.6.2.2. Ground level play components that are provided to comply with 15.6.2.1 shall be permitted to satisfy the number required by 15.6.2.2, provided that the minimum required types of play components are provided. Where more than one ground level play component required by 15.6.2.1 and 15.6.2.2 is provided, the

**15.6 Play Areas.**

play components shall be integrated in the play area.

**15.6.2.1 General.** Where ground level play components are provided, at least one of each type provided shall be located on an accessible route complying with 15.6.4 and shall comply with 15.6.6.

**15.6.2.2 Additional Number and Types.** Where elevated play components are provided, ground level play components shall be provided in accordance with Table 15.6.2.2. Ground level play components required by 15.6.2.2 shall be located on an accessible route complying with 15.6.4 and shall comply with 15.6.6.

EXCEPTION: If at least 50 percent of the elevated play components are connected by a ramp, and if at least 3 of the elevated play components

connected by the ramp are different types of play components, 15.6.2.2 shall not apply.

**15.6.3\* Elevated Play Components.** Where elevated play components are provided, at least 50 percent shall be located on an accessible route complying with 15.6.4. Elevated play components connected by a ramp shall comply with 15.6.6.

**15.6.4\* Accessible Routes.** At least one accessible route complying with 4.3, as modified by 15.6.4, shall be provided.

EXCEPTION 1: Transfer systems complying with 15.6.5 shall be permitted to connect elevated play components, except where 20 or more elevated play components are provided, no more than 25 percent of the elevated play components shall be permitted to be connected by transfer systems.

**Table 15.6.2.2 Number and Types of Ground Level Play Components Required to be on Accessible Route**

<b>Number of Elevated Play Components Provided</b>	<b>Minimum Number of Ground Level Play Components Required to be on Accessible Route</b>	<b>Minimum Number of Different Types of Ground Level Play Components Required to be on Accessible Route</b>
1	Not applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4
More than 25	8 plus 1 for each additional 3 over 25, or fraction thereof	5

**15.6 Play Areas.**

EXCEPTION 2: Where transfer systems are provided, an elevated play component shall be permitted to connect to another elevated play component in lieu of an accessible route.

EXCEPTION 3: Platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes shall be permitted to be used as part of an accessible route.

**15.6.4.1 Location.** Accessible routes shall be located within the boundary of the play area and shall connect ground level play components as required by 15.6.2.1 and 15.6.2.2 and elevated play components as required by 15.6.3, including entry and exit points of the play components.

**15.6.4.2 Protrusions.** Objects shall not protrude into ground level accessible routes at or below 80 in (2030 mm) above the ground or floor surface.

**15.6.4.3 Clear Width.** The clear width of accessible routes within play areas shall comply with 15.6.4.3.

**15.6.4.3.1 Ground Level.** The clear width of accessible routes at ground level shall be 60 in (1525 mm) minimum.

EXCEPTION 1: In play areas less than 1,000 square feet, the clear width of accessible routes shall be permitted to be 44 in (1120 mm) minimum, provided that at least one turning space complying with 4.2.3 is provided where the restricted accessible route exceeds 30 feet (9.14 m) in length.

EXCEPTION 2: The clear width of accessible routes shall be permitted to be 36 in (915 mm) minimum for a distance of 60 in (1525 mm) maximum, provided that multiple reduced width segments are separated by segments that are 60 in (1525 mm) minimum in width and 60 in (1525 mm) minimum in length.

**15.6.4.3.2 Elevated.** The clear width of accessible routes connecting elevated play components shall be 36 in (915 mm).

EXCEPTION 1: The clear width of accessible routes connecting elevated play components shall

be permitted to be reduced to 32 in (815 mm) minimum for a distance of 24 in (610 mm) maximum provided that reduced width segments are separated by segments that are 48 in (1220 mm) minimum in length and 36 in (915 mm) minimum in width.

EXCEPTION 2: The clear width of transfer systems connecting elevated play components shall be permitted to be 24 in (610 mm) minimum.

**15.6.4.4 Ramp Slope and Rise.** Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8, as modified by 15.6.4.4.

**15.6.4.4.1 Ground Level.** The maximum slope for ramps connecting ground level play components within the boundary of a play area shall be 1:16.

**15.6.4.4.2 Elevated.** Where a ramp connects elevated play components, the maximum rise of any ramp run shall be 12 in (305 mm).

**15.6.4.5 Handrails.** Where required on ramps, handrails shall comply with 4.8.5, as modified by 15.6.4.5.

EXCEPTION 1: Handrails shall not be required at ramps located within ground level use zones.

EXCEPTION 2: Handrail extensions shall not be required.

**15.6.4.5.1 Handrail Gripping Surface.** Handrails shall have a diameter or width of 0.95 in (24.1 mm) minimum to 1.55 in (39.4 mm) maximum, or the shape shall provide an equivalent gripping surface.

**15.6.4.5.2 Handrail Height.** The top of handrail gripping surfaces shall be 20 in (510 mm) minimum to 28 in (710 mm) maximum above the ramp surface.

**15.6.5\* Transfer Systems.** Where transfer systems are provided to connect elevated play components, the transfer systems shall comply with 15.6.5.

**15.6 Play Areas.**

**15.6.5.1 Transfer Platforms.** Transfer platforms complying with 15.6.5.1 shall be provided where transfer is intended to be from a wheelchair or other mobility device (see Fig. 64).

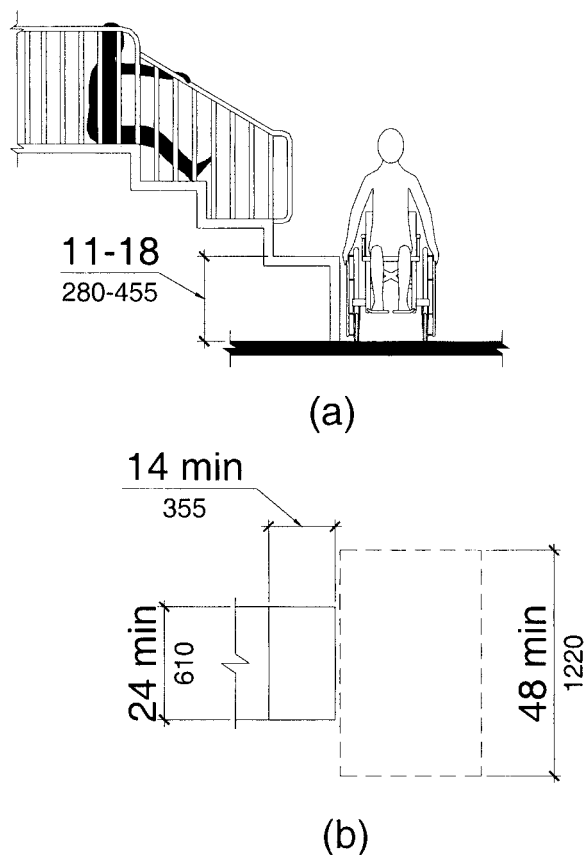


Fig. 64

**15.6.5.1.1 Size.** Platforms shall have a level surface 14 in (355 mm) minimum in depth and 24 in (610 mm) minimum in width.

**15.6.5.1.2 Height.** Platform surfaces shall be 11 in (280 mm) minimum to 18 in (455 mm) maximum above the ground or floor surface.

**15.6.5.1.3 Transfer Space.** A level space complying with 4.2.4 shall be centered on the 48 in (1220 mm) long dimension parallel to the 24 in (610 mm) minimum long unobstructed side of the transfer platform.

**15.6.5.1.4 Transfer Supports.** A means of support for transferring shall be provided.

**15.6.5.2 Transfer Steps.** Transfer steps complying with 15.6.5.2 shall be provided where movement is intended from a transfer platform to a level with elevated play components required to be located on an accessible route (see Fig. 65).

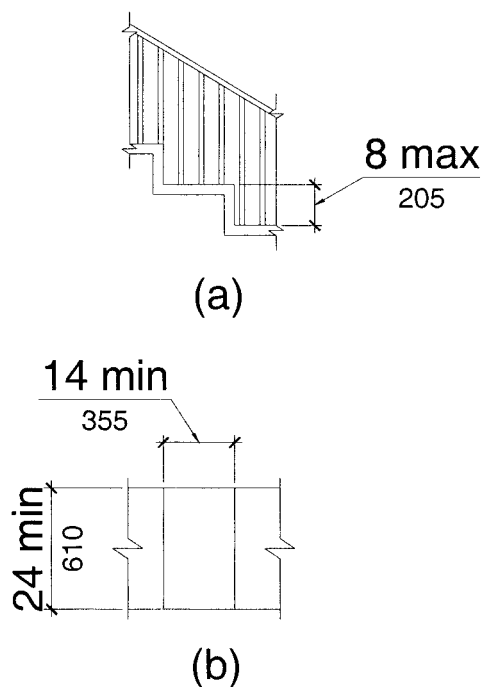


Fig. 65

**15.6.5.2.1 Size.** Transfer steps shall have a level surface 14 in (355 mm) minimum in depth and 24 in (610 mm) minimum in width.

**15.6.5.2.2 Height.** Each transfer step shall be 8 in (205 mm) maximum high.

**15.6 Play Areas.**

**15.6.5.2.3 Transfer Supports.** A means of support for transferring shall be provided.

**15.6.6\* Play Components.** Ground level play components located on accessible routes and elevated play components connected by ramps shall comply with 15.6.6.

**15.6.6.1 Maneuvering Space.** Maneuvering space complying with 4.2.3 shall be provided on the same level as the play components. Maneuvering space shall have a slope not steeper than 1:48 in all directions. The maneuvering space required for a swing shall be located immediately adjacent to the swing (see Fig. 66).

**15.6.6.2 Clear Floor or Ground Space.** Clear floor or ground space shall be provided at the play components and shall be 30 in (760 mm) by 48 in (1220 mm) minimum. Clear floor or ground space shall have a slope not steeper than 1:48 in all directions.

**15.6.6.3 Play Tables: Height and Clearances.** Where play tables are provided, knee clearance 24 in (610 mm) high minimum, 17 in deep (430 mm) minimum, and 30 in (760 mm) wide minimum shall be provided. The tops of rims, curbs, or other obstructions shall be 31 in (785 mm) high maximum.

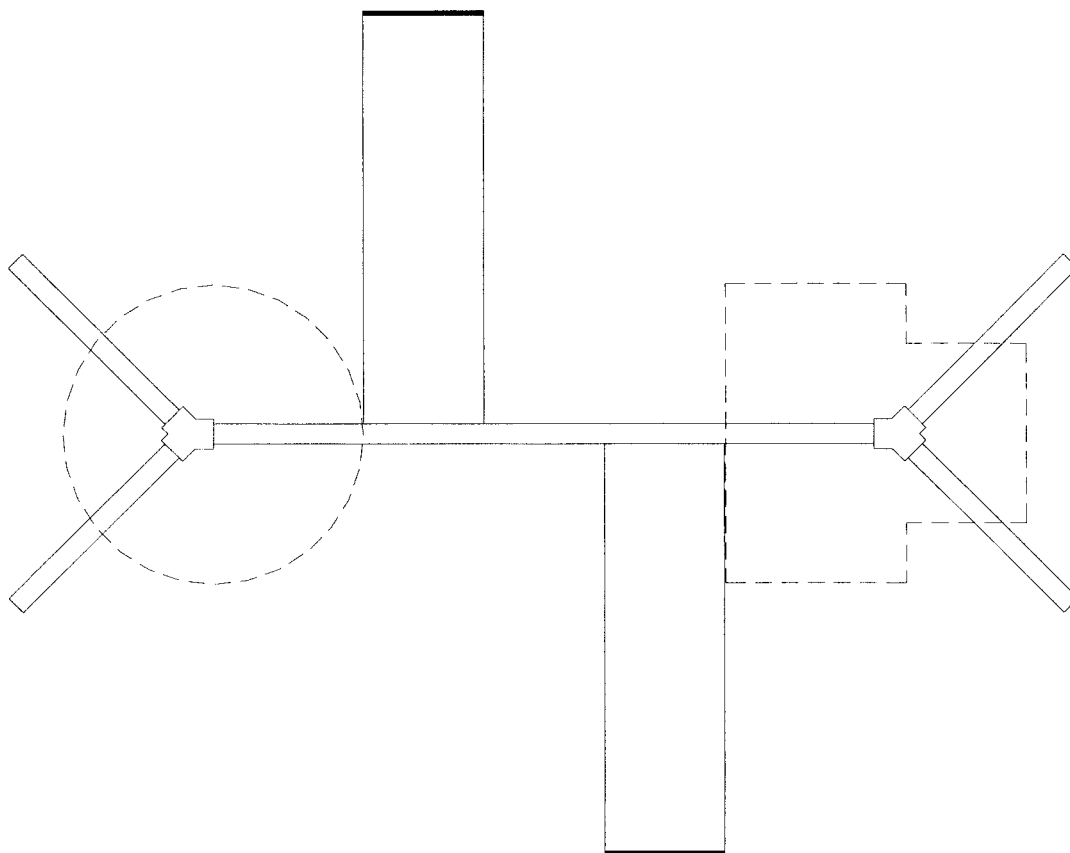


Fig. 66

**15.7 Sports Facilities. (Reserved).**

EXCEPTION: Play tables designed or constructed primarily for children ages 5 and under shall not be required to provide knee clearance if the clear floor or ground space required by 15.6.6.2 is arranged for a parallel approach and if the rim surface is 31 in (785 mm) high maximum.

**15.6.6.4 Entry Points and Seats: Height.**

Where a play component requires transfer to the entry point or seat, the entry point or seat shall be 11 in (280 mm) minimum and 24 in (610 mm) maximum above the clear floor or ground space.

EXCEPTION: The entry point of a slide shall not be required to comply with 15.6.6.4.

**15.6.6.5 Transfer Supports.** Where a play component requires transfer to the entry point or seat, a means of support for transferring shall be provided.

**15.6.7\* Ground Surfaces.** Ground surfaces along accessible routes, clear floor or ground spaces, and maneuvering spaces within play areas shall comply with 4.5.1 and 15.6.7.

**15.6.7.1 Accessibility.** Ground surfaces shall comply with ASTM F 1951 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 2.3.2). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951.

**15.6.7.2 Use Zones.** If located within use zones, ground surfaces shall comply with ASTM F 1292 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 2.3.2).

**15.6.8 Soft Contained Play Structures.** Soft contained play structures shall comply with 15.6.8.

**15.6.8.1 Accessible Routes to Entry Points.**

Where three or fewer entry points are provided, at least one entry point shall be located on an accessible route. Where four or more entry points are provided, at least two entry points shall be

located on an accessible route. Accessible routes shall comply with 4.3.

EXCEPTION: Transfer systems complying with 15.6.5 or platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes shall be permitted to be used as part of an accessible route.

**15.7 Sports Facilities. (Reserved).****15.8 Swimming Pools and Spas. (Reserved).**



## APPENDIX

**A15.6.1 General.** This section is to be applied during the design, construction, and alteration of play areas for children ages 2 and over. Play areas are the portion of a site where play components are provided. This section does not apply to other portions of a site where elements such as sports fields, picnic areas, or other gathering areas are provided. Those areas are addressed by other sections of ADAAG. Play areas may be located on exterior sites or within a building. Where separate play areas are provided within a site for children in specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with this section. Where play areas are provided for the same age group on a site but are geographically separated (e.g., one is located next to a picnic area and another is located next to a softball field), they are considered separate play areas and each play area must comply with this section.

**A15.6.2 Ground Level Play Components.** A ground level play component is a play component approached and exited at the ground level. Examples of ground level play components include spring rockers, swings, diggers, and stand alone slides. When distinguishing between the different types of ground level play components, consider the general experience provided by the play component. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide is not considered a different type of play component than a straight slide.

The number of ground level play components is not dependent on the number of children who can play on the play component. A large seesaw designed to accommodate ten children at once is considered one ground level play component.

Where a large play area includes two or more composite play structures designed for the same age group, the total number of elevated play

components on all the composite play structures must be added to determine the additional number and types of ground level play components that must be provided on an accessible route, and the type of accessible route (e.g., ramps or transfer systems) that must be provided to the elevated play components.

Ground level play components accessed by children with disabilities must be integrated in the play area. Designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children. Grouping all ground level play components accessed by children with disabilities in one location is not considered integrated.

**A15.6.3 Elevated Play Components.** Elevated play components are approached above or below grade and are part of a composite play structure. A double or triple slide that is part of a composite play structure is one elevated play component. For purposes of this section, ramps, transfer systems, steps, decks, and roofs are not considered elevated play components. These elements are generally used to link other elements on a composite play structure. Although socialization and pretend play can occur on these elements, they are not primarily intended for play.

Some play components may be considered ground level or elevated. For example, a stand alone climber is a ground level play component since it is approached and exited at the ground level. A climber that is attached to a composite play structure may be approached and exited at the ground level and considered a ground level play component, or it may be approached above grade from the composite play structure and considered an elevated component. Where a play component may be considered a ground level or an elevated play component, the designer or operator may choose which type of play component to consider it, but may not use the same play component to meet the requirements for both ground level and elevated play components. In the example of the climber attached to a composite play structure, if the

## APPENDIX

designer or operator provides an accessible route to the base and the top of the climber and uses it to count toward meeting the requirement in 15.6.3 that at least 50 percent of elevated play components must be located on an accessible route, the designer or operator may not use the same climber to count toward the requirement in 15.6.2 regarding the number and type of ground level play components that must be located on an accessible route.

**A15.6.4 Accessible Routes.** Accessible routes within the boundary of the play area must comply with 15.6.4. Accessible routes connecting the play area to parking, drinking fountains, and other elements on a site must comply with 4.3. Accessible routes provide children who use wheelchairs or other mobility devices the opportunity to access play components. Accessible routes should coincide with the general circulation path used within the play area. Careful placement and consideration of the layout of accessible routes will enhance the ability of children with disabilities to socialize and interact with other children.

Where possible, designers and operators are encouraged to provide wider ground level accessible routes within the play area or consider designing the entire ground surface to be accessible. Providing more accessible spaces will enhance the integration of all children within the play area and provide access to more play components. A maximum slope of 1:16 is required for ground level ramps; however, a lesser slope will enhance access for those children who have difficulty negotiating the 1:16 maximum slope. Handrails are not required on ramps located within ground level use zones.

Where a stand alone slide is provided, an accessible route must connect the base of the stairs at the entry point, and the exit point of the slide. A ramp or transfer system to the top of the slide is not required. Where a sand box is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised

sand table with knee clearance complying with 15.6.6.3.

Elevated accessible routes must connect the entry and exit points of 50 percent of elevated play components. Ramps are preferred over transfer systems since not all children who use wheelchairs or other mobility devices may be able to use or may choose not to use transfer systems. Where ramps connect elevated play components, the maximum rise of any ramp run is limited to 12 inches. Where possible, designers and operators are encouraged to provide ramps with a lesser slope than the 1:12 maximum. Berms or sculpted dirt may be used to provide elevation and may be part of an accessible route to composite play structures.

Platform lifts complying with 4.11 and applicable State and local codes are permitted as a part of an accessible route. Because lifts must be independently operable, operators should carefully consider the appropriateness of their use in unsupervised settings.

**A15.6.5 Transfer Systems.** Transfer systems are a means of accessing composite play structures. Transfer systems generally include a transfer platform and a series of transfer steps. Children who use wheelchairs or other mobility devices transfer from their wheelchair or mobility devices onto the transfer platform and lift themselves up or down the transfer steps and scoot along the decks or platforms to access elevated play components. Some children may be unable or may choose not to use transfer systems. Where transfer systems are provided, consideration should be given to the distance between the transfer system and the elevated play components. Moving between a transfer platform and a series of transfer steps requires extensive exertion for some children. Designers should minimize the distance between the points where a child transfers from a wheelchair or mobility device and where the elevated play components are located. Where elevated play components are used to connect to another elevated play component in lieu of an accessible route, careful consideration should be used in the selection of

## APPENDIX

the play components used for this purpose. Transfer supports are required on transfer platforms and transfer steps to assist children when transferring. Some examples of supports include a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles or bars, or D rings on the corner posts.

**A15.6.6 Play Components.** Clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap within play areas. A specific location has not been designated for the clear floor or ground spaces or maneuvering spaces, except swings, because each play component may require that the spaces be placed in a unique location. Where play components include a seat or entry point, designs that provide for an unobstructed transfer from a wheelchair or other mobility device are recommended. This will enhance the ability of children with disabilities to independently use the play component.

When designing play components with manipulative or interactive features, consider appropriate reach ranges for children seated in wheelchairs. The following table provides guidance on reach ranges for children seated in wheelchairs. These dimensions apply to either forward or side reaches. The reach ranges are appropriate for use with those play components that children seated in wheelchairs may access and reach. Where transfer systems provide access to elevated play components, the reach ranges are not appropriate.

Where a climber is located on a ground level accessible route, some of the climbing rings

should be within the reach ranges. A careful balance of providing access to play components but not eliminating the challenge and nature of the activity is encouraged.

**A15.6.7 Ground Surfaces.** Ground surfaces along clear floor or ground spaces, maneuvering spaces, and accessible routes must comply with the ASTM F 1951 Standard Specification for Determination of Accessibility to Surface Systems Under and Around Playground Equipment. The ASTM F 1951 standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, telephone (610) 832-9585. The ASTM F 1951 standard may be ordered online from ASTM (<http://www.astm.org>). The ASTM 1951 standard determines the accessibility of a surface by measuring the work required to propel a wheelchair across the surface. The standard includes tests of effort for both straight ahead and turning movement, using a force wheel on a rehabilitation wheelchair as the measuring device. To meet the standard, the force required must be less than that required to propel the wheelchair up a ramp with a 1:14 slope. When evaluating ground surfaces, operators should request information about compliance with the ASTM F 1951 standard.

Ground surfaces must be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951 standard. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities.

**Children's Reach Ranges**

<b>Forward or Side Reach</b>	<b>Ages 3 and 4</b>	<b>Ages 5 through 8</b>	<b>Ages 9 through 12</b>
<b>High (maximum)</b>	36 in (915 mm)	40 in (1015 mm)	44 in (1120 mm)
<b>Low (minimum)</b>	20 in (510 mm)	18 in (455 mm)	16 in (405 mm)

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When using a combination of surface materials, careful design is necessary to provide appropriate transitions between the surfaces. Where a rubber surface is installed on top of asphalt to provide impact attenuation, the edges of the rubber surface may create a change in level between the adjoining ground surfaces. Where the change in level is greater than ½ inch, a sloped surface with a maximum slope of 1:12 must be provided. Products are commercially available that provide a 1:12 slope at transitions. Transitions are also necessary where the combination of surface materials include loose fill products. Where edging is used to prevent the loose surface from moving onto the firmer surface, the edging may create a tripping hazard. Where possible, the transition should be designed to allow for a smooth and gradual transition between the two surfaces.



# Federal Register

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**Wednesday,  
October 18, 2000**

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## **Part V**

**Department of Defense  
Department of Energy  
Environmental Protection  
Agency  
Nuclear Regulatory  
Commission**

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**Multi-Agency Radiation Survey and Site  
Investigation Manual, Revision 1; Notice**

**DEPARTMENT OF DEFENSE****DEPARTMENT OF ENERGY****ENVIRONMENTAL PROTECTION  
AGENCY****NUCLEAR REGULATORY  
COMMISSION****[Docket No. A-96-44]****Multi-Agency Radiation Survey and  
Site Investigation Manual, Revision 1**

**AGENCY:** U.S. Department of Defense, U.S. Department of Energy, U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Department of Defense (DOD), U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA) and the U.S. Nuclear Regulatory Commission (NRC) are announcing the availability for use of the August 2000 Revision 1, of the December 1997 "Multi-Agency Radiation Survey and Site Investigation Manual" (MARSSIM). In response to comments received on the December 1997 MARSSIM, the MARSSIM has been updated to reflect resolution of these comments and to make minor editorial corrections. The changes are simple clarifications and corrections of errata, and they do not change the methods originally described. Therefore, the purpose of this new **Federal Register** Notice is to inform the public that the newly revised MARSSIM is available. The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soils and building surfaces for demonstrating compliance with regulations.

**ADDRESSES:** Copies of the MARSSIM, Revision 1, and all public comments received may be examined or copied for a fee at the EPA Docket Room M1500, Docket No. A-96-44, First Floor

Waterside Mall, 401 M Street, SW., Washington, DC 20460; and the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555-0001. The EPA docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays in Room M1500 at the address above. NRC documents may be inspected from 7:45 a.m. to 4:15 p.m., Monday through Friday, excluding Federal holidays in the lower level of the building at the address above.

Copies of the MARSSIM, Revision 1, may be purchased by requests in writing to: The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328. The NRC document number is NUREG-1575, Rev. 1, and the EPA document number is EPA 402-R-97-016, Rev. 1, and the DOE number is DOE/EH-0624, Rev. 1.

The manual, changed pages, and summary of comments received are also available through the Internet at: <http://www.epa.gov/radiation/marssim> or by linkage from the NRC home page at: <http://www.nrc.gov>; or the DOE home page at: <http://www.doe.gov>.

The author agencies continue to seek comments arising from use of the MARSSIM. Comments will be reviewed periodically by the author agencies, resolved as appropriate, and incorporated into revisions of the MARSSIM. Members of the public are invited to submit written comments to EITHER the U.S. Environmental Protection Agency, ATTN: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A-96-44, Room M1500, First Floor Waterside Mall, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or the Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Copies of all comments received by one agency will be periodically copies and sent to the others.

**FOR FURTHER INFORMATION CONTACT:** Any of the following points of contact for

each agency for technical information (see **ADDRESSES** section above for directions on obtaining a copy of the MARSSIM): DOE: Harold Peterson, Telephone: (202) 586-9640, U.S. Department of Energy (EH-412), 1000 Independence Avenue, SW., Washington, DC 20585, e-mail: [peterson.harold@eh.doe.gov](mailto:peterson.harold@eh.doe.gov); EPA: Mark Doehnert; Telephone: (202) 564-9386, U.S. Environmental Protection Agency, Mail Stop 6608J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: [doehnert.mark@epa.gov](mailto:doehnert.mark@epa.gov); NRC: Robert A. Meck, Telephone: (301) 415-6205, U.S. Nuclear Regulatory Commission, MS T-9C24, Washington, DC 20555-0001, e-mail: [ram2@nrc.gov](mailto:ram2@nrc.gov). Questions concerning the multi-agency document development project should be addressed to CDR Colleen Petullo, Telephone: (702) 798-2476, U.S. Public Health Service at U.S. Environmental Protection Agency, R&IE, P.O. Box 98517, Las Vegas, NV 89193-8517, e-mail: [petullo.colleen@epa.gov](mailto:petullo.colleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soil and building surfaces for demonstrating compliance with regulations. The MARSSIM, now as Revision 1, is a multi-agency consensus document. The MARSSIM was developed collaboratively over a four-year period by the technical staffs of four Federal agencies having authority for control of radioactive materials: DOD, DOE, EPA, and NRC. These staffs have continued to meet in order to discuss the future approaches to structural and environmental radiation surveys, future updates to the manual, using implementation tools such as training and software, and the schedule of future meetings. Members of the public and contractors to the Federal agencies have been present during the open meetings of the MARSSIM work group and have been provided opportunities for input.

The author agencies solicited comments arising from review and use of the final MARSSIM. In response to comments received to date, minor modifications were made to individual pages. Modifications to the manual correct errors, clarify guidance, and provide additional information. The methods originally described are not changed. The format of the MARSSIM has been changed to three-hole-punched pages for use in a binder. This format change will facilitate the insertion of the user's notes and future pages changes, if any. A complete list of comments and resolutions is available on the internet

at the MARSSIM world wide website at: <http://www.epa.gov/radiation/marssim>.

Dated in Arlington, VA, this 15th day of September 2000.

For the Department of Defense.

**Sherri W. Goodman,**

*Deputy Under Secretary of Defense,  
(Environmental Security).*

Dated in Washington, DC, this 11th day of September 2000.

For the U.S. Department of Energy.

**David Michaels,**

*Assistant Secretary, Environment, Safety and Health.*

Dated in Washington, DC, this 16th day of August 2000.

For the U.S. Environmental Protection Agency.

**Frank Marcinowski,**

*Acting Director, Radiation Protection  
Division, Office of Radiation and Indoor Air.*

Dated in Rockville, Maryland, this 28th day of August 2000.

For the U.S. Nuclear Regulatory Commission.

**Ashok Thadani,**

*Director, Office of Nuclear Regulatory  
Research.*

[FR Doc. 00-26668 Filed 10-17-00; 8:45 am]

**BILLING CODE 7590-01-M**



# Federal Register

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**Wednesday,  
October 18, 2000**

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## **Part VI**

## **Department of Education**

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**Special Education: State Program  
Improvement Grants Program; Notice  
Inviting Applications for New Awards for  
Fiscal Years 2000 and 2001**



## DEPARTMENT OF EDUCATION

[CFDA No.: 84.323A]

**Special Education: State Program Improvement Grants Program; Notice Inviting Applications for New Awards for Fiscal Years (FYs) 2000 and 2001**

**Note to Applicants:** This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

**Purpose of Program:** The purpose of this program, authorized under the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, is to assist State educational agencies and their partners referred to in Section 652(b) of IDEA with reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

**Eligible Applicants:** A State educational agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

**General Requirements:** (a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA); and

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

**Deadline for Transmittal of Applications:** February 13, 2001.

**Deadline for Intergovernmental Review:** April 16, 2001.

**Available Funds:** \$3.5 million of FY 2000 funds and an estimated \$10.6 million of FY 2001 funds.

**Estimated Range of Awards:** Awards will be not less than \$500,000, nor more than \$2,000,000, in the case of the 50

States, the District of Columbia, and the Commonwealth of Puerto Rico; and not less than \$80,000, in the case of an outlying area. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

We will set the amount of each grant after considering:

- (1) The amount of funds available for making the grants;
- (2) The relative population of the State or outlying area; and
- (3) The types of activities proposed by the State or outlying area.

**Reasonable Accommodations:** We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

**Estimated Average Size of Awards:** \$1,000,000.

**Estimated Number of Awards:** 13. We expect to make approximately three awards using FY 2000 funds and ten awards using FY 2001 funds. Awards using FY 2001 funds will be made after July 1, 2001.

**Note:** The Department of Education is not bound by the estimated size and number of awards in this notice.

**Project Period:** Not less than one year and not more than five years.

**Page Limits:** Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed under each applicable priority, using the following standards:

- A "page" is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and

certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria for this program are drawn from EDGAR in 34 CFR 75.210.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

**Description of Program:** The statutory authorization for this program and the application requirements that apply to this competition are set out in section 651–655 of the IDEA.

**Findings and Purposes:** (a) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

(b) In order for States to address those demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

(c) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and make needed changes to address the needs of children with disabilities into the next century.

(d) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

(e) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.

(f) Research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

(1) Maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals;

(2) Create a system that fully addresses the needs of all students, including children with disabilities, by addressing the needs of children with disabilities in carrying out educational reform activities;

(3) Clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

(4) Promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

(5) Ensure that children with disabilities are provided assistance and support in making transitions as described in section 674(b)(3)(C) of the Act;

(6) Promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

(7) Disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

(8) Create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

(9) Establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and

(10) Involve individuals with disabilities and parents of children with disabilities in planning, implementing,

and evaluating systemic-change activities and educational reforms.

**Absolute Priority:** Under section 653 and 34 CFR 75.105(c)(3), we will give an absolute preference to applications that meet the following priority. We will fund under this competition only those applications that meet this absolute priority.

This priority supports projects that assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

**State Improvement Plan.** Applicants must submit a State improvement plan that—

(a) Is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, if appropriate;

(b) Identifies those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16) of the Act. Specifically, applicants must include:

(1) An analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

(i) Their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) Their participation in postsecondary education and employment; and

(iii) How their performance on the assessments and indicators compares to that of non-disabled children;

(2) An analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum:

(i) The number of personnel providing special education and related services; and

(ii) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (b)(2)(i) with temporary certification), and on the extent of certification or retraining necessary to eliminate those

shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

(3) An analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

(4) An analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities;

(c) Describes a partnership agreement that—

(1) Specifies—

(i) The nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

(ii) How those agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

(2) Is in effect for the period of the grant;

(d) Describes how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including funds under part B of the Act retained for use at the State level under sections 611(f) and 619(d) of the Act, that will be committed to the systemic-change activities;

(e) Describes the strategies the State will use to address the needs identified under paragraph (b), including how it will—

(1) Change State policies and procedures to address systemic barriers to improving results for children with disabilities;

(2) Hold local educational agencies and schools accountable for educational progress of children with disabilities;

(3) Provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

(4) Address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with

disabilities, including a description of how it will—

- (i) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;
- (ii) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;
- (iii) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;
- (iv) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;
- (v) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;
- (vi) Enhance the ability of teachers and others to use strategies, like behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;
- (vii) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State, if appropriate, will adopt promising practices, materials, and technology;
- (viii) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;
- (ix) Integrate its plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and
- (x) Provide for the joint training of parents and special education, related services, and general education personnel;

(5) Address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

(6) Disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4) of the Act;

(7) Address improving results for children with disabilities in the geographic areas of greatest need;

(8) Assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(9) Coordinate its improvement strategies with public and private sector resources.

*Required partners.* Applicants must:

(a) Establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities; and

(b) Work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

- (1) The Governor;
- (2) Parents of children with disabilities;
- (3) Parents of nondisabled children;
- (4) Individuals with disabilities;
- (5) Organizations representing individuals with disabilities and their parents, such as the parent training and information centers;
- (6) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;
- (7) The lead State agency for part C of the Act;
- (8) General and special education teachers, and early intervention personnel;
- (9) The State advisory panel established under part B of the Act;
- (10) The State interagency coordinating council established under part C of the Act; and
- (11) Institutions of higher education within the State.

*Optional partners.* A partnership established by applicants may also include—

- (a) Individuals knowledgeable about vocational education;
- (b) The State agency for higher education;
- (c) The State vocational rehabilitation agency;
- (d) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and
- (e) Other individuals.

*Reporting procedures.* Each State educational agency that receives a grant must submit performance reports to the

Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports must describe the progress of the State in meeting the performance goals established under Section 612(a)(16) of the Act, analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance. Grantees must also provide information required under EDGAR at 34 CFR 80.40.

*Use of funds.* Each State educational agency that receives a State Improvement Grant under this program—

(a) May use grant funds to carry out any activities that are described in the State's application and that are consistent with the purpose of this program;

(b) Shall, consistent with its partnership agreement established under the grant, award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan; and

(c) May award contracts and subgrants to other public and private entities, including the lead agency under part C of the Act, to carry out that plan;

(d)(1) Shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

(i) To ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

(ii) To work with other States on common certification criteria; or

(2) Shall use not less than 50 percent of those funds for these purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (d)(1).

*Selection Criteria:* We will use the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (19 points). (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed

project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance.* (19 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the project design.* (19 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(vi) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(d) *Quality of project personnel.* (8 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources.* (8 points).

(1) The Secretary considers the

adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(v) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to this type of support.

(f) *Quality of the management plan.* (8 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(g) *Quality of the project evaluation.* (19 points). (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are

clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

*Competitive Preference:* Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities as project employees in project activities as required under paragraph (a) of the "General Requirements" section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 110 points.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. The addresses of individual State Single Point of Contact are in the Appendix to this notice.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local

entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.323A, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202-0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

*Instructions for Transmittal of Applications:* (a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.323A), Washington, D.C. 20202-4725; or

(2) Hand-deliver the original and six copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.323A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the

date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

#### *Application Instructions and Forms:*

The appendix to this notice is divided into three parts, plus a statement regarding estimated public reporting burden, additional non-regulatory guidance, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions. The budget section of the application form requires all applicants for multi-year projects to provide detailed budget information for the total grant period requested. The Department will establish, at the time of initial award, the funding levels for each year of the grant award. By requesting detailed budget information in the initial application for the total grant period, the need for a formal noncompeting continuation application in the remaining years has been eliminated. A performance report will be required annually to determine substantial progress, rather than a non-competing continuation application.

Part III: Application Narrative.

#### **Additional Materials**

The following forms and other items must be included in the application:

a. Estimated Public Reporting Burden.  
b. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

c. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

d. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80-0014) and instructions.

**Note:** ED Form GCS-0014 is intended for the use of grantees and should not be transmitted to the Department.

e. Certification of Eligibility for Federal Assistance in Certain Programs (ED 80-0016).

f. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413) on January 19, 1996.

g. Addresses of the individual State Single Point of Contact.

h. Table of Contents.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit one original signed application, including ink signatures on all forms and assurances, and three copies of the application. Please mark each application as “original” or “copy”. No grant may be awarded unless a completed application has been received.

*For Applications and General Information Contact:* Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202-2641. The preferred method for requesting information is to FAX your request to: (202) 205-8717. Telephone: (202) 260-9182. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205-8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

#### **Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>  
<http://www.ed.gov/news.html>

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the

Washington, DC., area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: <http://www.access.gpo/nara/index.html>.

**Program Authority:** 20 U.S.C. 1405, 1461, 1472, 1474, and 1487.

Dated: October 12, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

### Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1820-0620. The time required to complete this information collection is estimated to average between 50-130 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Special Education Programs, U.S. Department of Education, 400 Independence Avenue, SW., Washington, D.C. 20202-2641.

### Application Narrative

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

### Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components.

### Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application must be mailed to the

Application Control Center (ACC) and postmarked by the deadline date of February 13, 2001.

### Questions and Answers

Following is a series of questions and answers that will serve as guidance for State Educational Agency in completing the grant application for a State Improvement Grant (SIG) as authorized by the Individuals with Disabilities Education Act (IDEA). The questions were chosen to provide additional insight into the statutory requirements contained in the grant application. The questions were generated from a number of sources including parents of students with disabilities, Regional Resource Centers, the Federal Resource Center, State Directors of Special Education, State Education Agency staff and staff from the Office of Special Education Programs.

### Eligible Applicants

1. Who may apply for a State Improvement Grant?

A State Educational Agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).<sup>1</sup> (sections 602(18), 602(27), 652(a), and 655(a)(1)(2)).

2. Can two or more SEAs apply jointly for a SIG?

No. A State applying for a State Improvement Grant must submit an individual application. However, included in the application will be a description of how: (1) The State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of this type of program of preparation; and (2) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel (section 653(c)(3)(D)(iv) and (v)).

### Partners

3. With whom is the State supposed to form partnerships and how are the partnerships structured?

Part D Subpart 1—State Program Improvement Grants for Children with

Disabilities, section 652(b) describes three types of State partners. In order to be considered for a State Improvement Grant, a State educational agency must establish a partnership with individuals and organizations considered "Required Partners." Required partners are made up of two subsets of partners—those called "Contractual partners" and those called "Other partners." The SEA's contractual partners are local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities. These partners are called contractual because they must be parties to a formal "partnership agreement" that is explained further below in question four.

The other partners are individuals and organizations involved in, and concerned with, the education of children with disabilities, with whom the SEA must work in partnership to implement the State improvement grant. Other partners may be, but the SEA is not required to make them, parties to the formal partnership agreement. Those "other partners" must include the Governor; parents of children with disabilities; parents of nondisabled children; individuals with disabilities; organizations representing individuals with disabilities and their parents, such as the parent training and information centers;<sup>2</sup> community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities; the lead State agency for Part C; general and special education teachers, and early intervention personnel; the State advisory panel established under Part B; the State interagency coordinating council established under Part C; and institutions of higher education (IHEs) within the State. The State is encouraged to only partner with those IHEs that are currently implementing or, based on the partnership Agreement, will develop and implement, training programs that are consistent with the principles of IDEA Amendments of 1997 (e.g., training that facilitates access to the general education curriculum; training that facilitates inclusionary practices; joint training of general educators, special educators and parents, where appropriate; training that targets pedagogical practices that focus on accommodating and modifying instruction to meet State standards). Based on the needs assessment, the State must focus at least 75% of the funds received under the State

<sup>1</sup> Unless otherwise noted, the term "State" refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the outlying areas (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands).

<sup>2</sup> States in which Community Parent Resource Centers are located are encouraged to include these organizations as "other partners."

Improvement Grant on the professional development and training of regular education, special education, or related services personnel (only 50% of the funds must be used on professional development if the State can demonstrate to the Department that it has sufficient personnel; see question 13 for additional clarification). In order to ensure that the perspectives of school based staff are represented in the grant activities, the State is encouraged to incorporate into its partnership agreement and partnership activities, professional organizations that negotiate for and may represent school-based staff.

In addition to required partners, the SEA, at its option, may include as partner's individuals and organizations called "Optional Partners". The SEA may include "optional partners" as parties to the formal partnership agreement or work in partnership with them, without them being parties to the partnership agreement. Those optional partners may include individuals knowledgeable about vocational education, the State agency for higher education, the State vocational rehabilitation agency, public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice and other individuals.

4. What is the partnership agreement and what must it include?

Each State's application must include a description of the partnership agreement entered into by the SEA with its contractual partners and with any "other" and "optional" partners who will be parties to the partnership agreement. As specified in the grant application package, the partnership agreement must specify the nature and extent of the partnership among the SEA, the LEAs, and other State agencies involved in, or concerned with, the education of children with disabilities. It must specify the respective roles of each member of the partnership in the implementation of the proposed State improvement grant. The partnership agreement must also specify how the SEA, LEAs, and other State agencies identified above, will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities (these would be the "other partners" and any "optional partners"), and must specify the respective roles of each of these persons and organizations (section 653(c)(1)(B)).

The partnership agreement must indicate that it is in effect for the period of the grant. The terms of the partnership agreement will determine

whether the SEA will award subgrants or contracts to any of the partners listed in section 654(a)(2)(A).

5. What is the connection between the partnership agreement and the SEA's use of funds?

The SEA must, as appropriate, award contracts or subgrants to LEAs, IHEs, and parent training and information centers identified in the partnership agreement to carry out the State improvement grant activities. To carry out the State improvement grant activities, the SEA may also award contracts and subgrants to other public and private entities, including the lead agency under Part C and other agencies that are partners, as well as public and private entities that are not partners. It is anticipated that an SEA will need and desire the resources of other individuals and organizations to develop and implement all of the systemic change, technical assistance, in-service and pre-service training, dissemination and assessment activities designated in the State improvement grant application. There is, however, no required amount of funds that must be used for contracts or subgrants (section 654(a)(2)).

#### *Funding Availability and Levels*

6. What are the grant amounts to States?

We must make a grant to each State educational agency whose application we selected for funding under this subpart in an amount for each fiscal year that is: (1) Not less than \$500,000, nor more than \$2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and (2) not less than \$80,000, in the case of an outlying area (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands (Section 655(a)). This means that the Department will reject and will not consider any application that proposes a budget that exceeds the maximum award amount or is less than the minimum award amount for any single budget period of 12 months. However, we will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

**Note:** As soon as the procedures for implementing reasonable accommodations are finalized, they will be posted on OSERS homepage at: [www.ed.gov/offices/OSERS](http://www.ed.gov/offices/OSERS).

7. How will decisions be made regarding the amount of funds that States will receive if approved for a State Improvement Grant?

The Department will set the amount of each grant, within the limits outlined in the response to question 6, after considering: (1) The relative population of the State; (2) the types of activities proposed by the State; and (3) the amount of funds available for making the grants (section 655(c)). Using the same considerations, we funded successful applications for fiscal years 1998 and 1999 at the following levels:

North Dakota .....	\$500,000
Vermont .....	500,000
Alaska .....	550,000
Montana .....	550,000
Nebraska .....	575,816
Utah .....	578,551
New Hampshire .....	600,000
Hawaii .....	600,000
Idaho .....	625,000
Oklahoma .....	814,000
Iowa .....	875,526
Kansas .....	900,000
Connecticut .....	920,000
Kentucky .....	1,000,000
Massachusetts .....	1,009,000
Minnesota .....	1,015,000
Alabama .....	1,025,000
Georgia .....	1,060,000
Maryland .....	1,095,000
Missouri .....	1,145,000
North Carolina .....	1,210,000
Virginia .....	1,240,000
Ohio .....	1,320,000
Pennsylvania .....	1,320,000
Michigan .....	1,320,000
Illinois .....	1,400,000
California .....	1,840,000

8. How will the connection between grant amounts and "need" be determined?

As previously stated in the response to question 7, we must set the amount of each grant after considering: (1) The relative population of the State; (2) the types of activities proposed by the State or outlying area; and (3) the amount of funds available for making the grants. "Need" will be determined through the quality of the needs assessment performed under section 653(b) including: (i) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State; (ii) an analysis of State and local needs for professional development for personnel to serve children with disabilities; (iii) an analysis of the major findings of the Department's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and (iv) an analysis of other information, for example, findings made by the Department's Office for Civil Rights, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in



meeting the needs of children with disabilities.

9. What we will consider in making an award on a competitive basis?

Using the selection criteria identified elsewhere in this application package, we expect to select for funding applications from States that demonstrate a need for improvement and effective strategies to meet those State needs. The application should show how the State plans to fulfill the purpose of the State Improvement Grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. We will give priority to applications on the basis of need, as indicated by information from the findings of Federal compliance reviews (section 653(d)).

#### *Improvement Strategies and Use of Funds*

10. Can funds from the State Improvement Grants be distributed to LEAs on a competitive basis?

Yes. The statute does not provide a particular method for States to use when distributing State Improvement Grant funds to LEAs or other entities. When awarding and administering subgrants, under 34 CFR 80.37(a), the State must follow State law and procedures. As long as the SEA's proposal to contract or subgrant SIG funds is consistent with the partnership agreement and the funds are used to support the activities specified in the approved grant application, there is no statutory prohibition against the funds being distributed to LEAs on a competitive basis.

11. Can charter schools be involved as partners in the State Improvement Grant?

Yes. Charter schools are schools under contract—or charter—between a public agency and groups of parents, teachers, community leaders or others who want to create alternatives and choice within the public school system. Charter schools can be involved as partners in the State Improvement Grant, either as an LEA or as part of an existing LEA, consistent with the State charter schools law.

12. Does the "service obligation" apply to the use of State Improvement Grant funds if they are being used for scholarships?

No. The "service obligation" contained under the personnel

preparation discretionary grant program provides that a recipient of a scholarship funded by the personnel preparation program under section 673(b), (c), (e), and to the extent appropriate (d), must subsequently perform work in the field in which they were trained or repay the cost of the financial assistance. The service obligation only applies to scholarships awarded under the personnel preparation program. However, consistent with State law, a SEA may impose its own service obligation.

13. Can funds be used to prepare early intervention personnel?

Yes, but only in limited circumstances. Under section 654(b)(1), a State educational agency that receives a grant must use not less than 75 percent of the funds it receives under the grant for any fiscal year to work with other States on common certification criteria or to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children. This section ensures that based on the needs assessment, the State focuses at least 75% of the funds received under the State Improvement Grant on the professional development and training of regular education, special education, or related services personnel. Only 50% of the funds must be used on professional development if the State can demonstrate to the Department that it has sufficient personnel. Training that prepares personnel to deliver early intervention services that could not also be considered regular education, special education, or related services would not be a permissible use of the 75%, or 50% as the case may be, of the funds. However, it would be permissible for early intervention personnel to participate in training in those areas of special education and related services that would be useful to them, even if the training is funded using the 75% of the funds. There is no limitation on the use of the remaining 25% of the funds received under the SIG; it can be used to train personnel to provide early intervention services or for any other activity in an approved SIG.

14. How does a State demonstrate that it meets the requirement to use at least 75% (or 50% if applicable) of the grant funds for professional development?

States should structure the presentation of their budget so that the Department can easily determine that the State has met the 75% or 50% requirement as the case may be.

15. What is the relationship of the SIG to the State set aside under Part B?

In order to carry out the activities proposed in the State's SIG application, a State may choose to supplement the State Improvement Grant award with funds from the IDEA Part B State set aside (*i.e.*, the portion of the IDEA, Part B grant awards retained for use by the SEA under sections 611(f) and 619(d) of the Act for discretionary purposes).

16. Can funds from sources other than the SIG be used to support the required activities for awards under this program?

Yes. In addition to the SIG award, funds from other sources (*e.g.*, other IDEA discretionary grants, Part B State set aside funds, preschool grants) may be used, so long as those activities are permissible under the funding statute and regulations to carry out any activities described in the State's SIG application. States may also use funds from private sources (*e.g.* foundations) to carry out activities described in the State's application. In its State Improvement Plan, the State must describe the amount and nature of funds from any other sources, including the Part B funds retained for use under sections 611(f) and 619(d) of the Act and Part D discretionary funds that will be committed to the SIG program.

17. Can SIG funds be used for direct services to children with disabilities?

Yes. The statute does not forbid the use of SIG funds for direct services to children with disabilities; however, funding for these services must come from the 25% or 50% of the grant award, as the case may be, not obligated by statute to fund professional development activities or to work with other States on common certification criteria. In addition, the need for direct services must be one of the critical aspects of early intervention, general education and special education identified in the State's need assessment. The direct services improvement strategy must be described in the States' application and be consistent with the purpose of the grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

#### *Strategies Used To Address Identified Needs*

18. Is interstate personnel preparation mandatory?



No. The State is required to describe how it will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within the State to justify support or development of this type of program of preparation (section 653(c)(3)(D)(iv)). If the State demonstrates, through its needs assessment, that there is sufficient demand within the State to support its own personnel preparation programs, then interstate collaborative agreements are not required.

19. Is training of general education personnel required?

Yes. In its application, the State is required to include a description of how the State will prepare general as well as special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities (section 653(c)(3)(D)(i)).

20. Is training of parents required?

Yes. In its application, the State is required to include a description of how the State will provide for the joint training of parents and special education, related services, and general education personnel (section 653(c)(3)(D)(x)).

*Role of Regional Resource Center/ Technical Assistance and Dissemination Projects*

21. What role can the Regional Resource Center (RRC) play in the development of the State improvement grant application?

The RRC is encouraged to provide general technical assistance to States in the development of their State improvement grant application. An RRC is funded to provide technical assistance and resources to all States within its region and must do so on an equitable basis across those States. Helping States improve their special education programs is the central mission of the RRCs and many State activities related to the State Improvement Grant program will be crucial in these improvement efforts. It would be inappropriate, however, for an RRC to help a State in drafting its grant application or even to provide technical assistance on strategies to improve the competitiveness of a State's application because it could be viewed as providing a competitive advantage to one potential applicant over another. On the other hand, helping States, for example, with data analyses, needs assessments, and facilitating meetings concerning planning the States' improvement activities could be, except as noted

above, a part of the RRC's technical assistance activities to the States in their region. RRCs can also assist States in their implementation of a State Improvement Grant once those grants are awarded.

22. Can the State use SIG funds to subcontract or contract with the University or entity in which the RRC is located to carry out SIG activities?

Yes. The State can use SIG funds to subgrant or contract with the University or entity in which the RRC is located to carry out SIG activities. However, the University or other entity would need to ensure that personnel time and other resources covered by the RRC's cooperative agreement with the Department are not used to work on SIG activities performed under the subgrant or contract and that work done under the other subcontract or contract is not represented as being performed as part of the cooperative agreement with the Department of Education.

23. Can Technical Assistance and Dissemination (TA&D) projects funded by OSEP play a role in SIG activities?

Similarly to RRCs, TA&D projects funded by OSEP must ensure that the services they provide are fairly and evenhandedly available to their respective audience (under the terms of their OSEP funding agreement/grant/contract) in all States, that the proposed SIG activity is permissible under the terms of the particular Project's funding agreement/ grant/contract/ with OSEP and that projects do not accept SIG funds under contract or grant with an SEA for activities they are currently receiving Federal funds to provide. In addition, TA&D projects, like the RRCs, should not engage in activities that could be seen as providing a competitive advantage to any one State over others in the SIG competition.

*Relationship Between State Improvement Grant and Other Federal Statutes and Requirements*

24. What is the link between the Comprehensive System of Personnel Development (CSPD) and the SIG? What are the similarities and differences?

The requirements for a CSPD as amended by IDEA Amendments of 1997 must be implemented by July 1, 1998 regardless of whether or not a State receives a SIG. Under section 612(a)(14) of IDEA, in order to be eligible for funding under Part B, a State must have in effect a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, related services, and early intervention personnel and that meets the requirements contained in the

personnel development sections of the State Improvement Plan addressing needs assessment and improvement strategies. It is intended that the CSPD meet the SIG personnel development requirements so that it may serve as the framework for the State's personnel development part of a SIG grant application.

25. To what extent does the State improvement grant proposal have to be linked to the Elementary and Secondary Education Act of 1965 (ESEA) and the Rehabilitation Act of 1973?

To the "maximum extent possible" State improvement grant proposals must be linked to State plans under ESEA and the Rehabilitation Act of 1973. The IDEA Amendments of 1997 emphasize that children with disabilities have access to the general curriculum and general educational reforms. Although the legislation does not mention integration with any other State plans under any other Federal statute, because the State improvement grant proposal is focused on systems change for students with disabilities, integration with relevant State plans or projects would be beneficial (section 653(a)(2)(A)).

26. What is the relationship between the performance goals and indicators a State must have to be eligible for Part B and the State improvement grant proposal?

Under Part B (section 612(a)(16)), in order to be eligible to receive financial assistance under Part B, the State must have in place by July 1, 1998 performance goals for children with disabilities that must promote the purposes of the IDEA and be consistent, to the maximum extent appropriate, with other goals and standards developed for children established by the State and performance indicators to assess progress toward achieving those goals. A State must have developed those performance goals and indicators in order to apply for a State Improvement Grant because in conducting the needs assessment required as part of its application, the State must identify those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the performance goals and indicators established by the State for the performance of children with disabilities under section 612(a)(16). In submitting the required SIG performance reports to the Department under section 653(f), the State must describe the progress of the State in meeting the performance goals established under section 612(a)(16), analyze the effectiveness of the State's

strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.

#### *Monitoring and Corrective Action Plans*

27. How is the State Improvement Grant aligned with Federal compliance reviews?

There are three areas in which the State Improvement Grant aligns with Federal compliance reviews. First, the State improvement plan must include an analysis of the major findings of the Department's most recent reviews of State compliance, as they relate to improving results for children with disabilities (section 653(b)(2)(C)). The second is that the State improvement plan must include a description of strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel (section 653(c)(3)(E)). The third area of alignment with monitoring is that in determining competitive awards we will give priority to applications on the basis of need, as indicated by information from the findings of Federal compliance reviews (section 653(d)(2)).

28. Can the State Improvement Grant funds be used to address deficiencies identified in Federal compliance reviews?

Yes, if the activities to address the deficiencies are consistent with the purposes of the grant and described in the State's application. If, for example, a Federal compliance review identified that a personnel shortage impacted on the provision of a free appropriate public education to students with disabilities, then it would be consistent with the purposes of the grant to use grant funds to address the personnel shortage.

#### *Applications, Length of Awards, and Reapplication*

29. Can the first grant be written as a planning grant?

No. The purpose of the SIG program is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. In order to be funded a State must include in its application improvement strategies that were developed to address State and local needs identified in the State needs assessment. The purpose of the needs assessment is to provide the necessary information to facilitate the development of a State improvement plan that identifies those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16). In conjunction with the needs assessment, the improvement strategies (section 653(c)) subsumed in the State improvement grant proposal constitute the State's plan for the use of SIG funds.

30. What grant period can a State request in its initial application?

A State may request a grant of from one to five years. However, we may award a grant that is shorter than the State requests, but not less than one year, if the State's application does not sufficiently justify the full requested duration.

31. If a project is funded for less than five years, can it be extended later?

No, with the exception of relatively short "no-cost" extensions that are sometimes given to allow the completion of project activities. These extensions do not award new funds or approve new activities.

32. After a State completes one State improvement grant, can it apply for another? If so, will it compete against all applicants or only against other States that have received previous grants?

Yes, a State can apply for another SIG after it completes one. It will be in competition with all applicants, not just those with previous grants. We will give priority to applications on the basis of need (section 653(d)(2)).

33. If a State applies unsuccessfully in one year, will it be able to apply again?

Yes.

34. Will a project be approved and funded all at once or a year at a time?

At the time of the initial grant award, the project duration of one to five years will be determined and budgets for all years of the grant will be established. However, funds can only be awarded one-year at a time. States receiving multi-year grants will submit annual performance reports to demonstrate that their grants are making "substantial progress." Funding for project years after the first will be based, in part, on these reports. This is not part of the competitive process of awarding funds, and it is expected that funding will be continued each year for the duration of the project, provided that substantial progress is demonstrated and that Congress continues to fund the program.

35. Does funding have to be the same for all years of the project?

No, but it cannot exceed \$2 million or be less than \$500,000.

**BILLING CODE 4000-01-P**

# Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.



U.S. Department of Education

Form Approved  
OMB No. 1875-0106  
Exp. 06/30/2001

## Applicant Information

### 1. Name and Address

Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

Organizational Unit

City

State

County

ZIP Code + 4

### 2. Applicant's D-U-N-S Number

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### 3. Applicant's T-I-N

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### 4. Catalog of Federal Domestic Assistance #:

8	4								
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Title: \_\_\_\_\_

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No  
(If "Yes," attach an explanation.)

### 5. Project Director:

Address: \_\_\_\_\_

City

State

ZIP Code + 4

Tel. #: ( ) \_\_\_\_\_ - \_\_\_\_\_ Fax #: ( ) \_\_\_\_\_ - \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

### 7. Type of Applicant (Enter appropriate letter in the box.)

- |                    |   |
|--------------------|---|
| A State            | H Independent School District               |
| B County           | I Public College or University              |
| C Municipal        | J Private, Non-Profit College or University |
| D Township         | K Indian Tribe                              |
| E Interstate       | L Individual                                |
| F Intermunicipal   | M Private, Profit-Making Organization       |
| G Special District | N Other (Specify): _____                    |

8. Novice Applicant ☐ Yes ☐ No

## Application Information

### 9. Type of Submission:

—PreApplication

—Application

☐ Construction☐ Construction☐ Non-Construction☐ Non-Construction

### 10. Is application subject to review by Executive Order 12372 process?

☐ Yes (Date made available to the Executive Order 12372 process for review): \_\_\_\_/\_\_\_\_/\_\_\_\_

☐ No (If "No," check appropriate box below.)

☐ Program is not covered by E.O. 12372.☐ Program has not been selected by State for review.

### 12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

b. Assurance of Compliance #:

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OR

--

c. IRB approval date: \_\_\_\_\_

☐ Full IRB or  
☐ Expedited Review

### 11. Proposed Project Dates:

Start Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

End Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

### 13. Descriptive Title of Applicant's Project:

## Estimated Funding

14a. Federal	\$	.00
b. Applicant	\$	.00
c. State	\$	.00
d. Local	\$	.00
e. Other	\$	.00
f. Program Income	\$	.00
g. TOTAL	\$	.00

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) \_\_\_\_\_ - \_\_\_\_\_ Fax #: ( ) \_\_\_\_\_ - \_\_\_\_\_

d. E-Mail Address: \_\_\_\_\_

e. Signature of Authorized Representative

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.
2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: <http://www.dnb.com/dbis/aboutdb/intlduns.htm>.
3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.
4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.
5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.
6. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."
7. **Type of Applicant.** Enter the appropriate letter in the box provided.
8. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."
9. **Type of Submission.** Self-explanatory.
10. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."
11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).
12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check "No." **The remaining parts of item 12 are then not applicable.**

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in "Protection of Human Subjects in Research" attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in "Protection of Human Subjects in Research" attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

**tion of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

**If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter "Pending" in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance** that covers the proposed research activity, enter "None" in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.
15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

## PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

### I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under II.B. "Exemptions," below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment"** and insert this attachment immediately following the ED 424 face page.

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the cir-

cumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

### II. Information on Research Activities Involving Human Subjects

#### A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

#### —Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

### —Is it a human subject?

The regulations define human subject as “a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information.” (1) *If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met.* (2) *If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

### B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of **exemptions** are not covered by the regulations:

- (1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.
- (2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of pub-*

*lic behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]


- (3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

- (4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

- (5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

- (6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

*Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at <http://ocfo.ed.gov/humansub.htm>.*

		<b>U.S. DEPARTMENT OF EDUCATION</b> <b>BUDGET INFORMATION</b> <b>NON-CONSTRUCTION PROGRAMS</b>		OMB Control Number: 1890-0004		
				Expiration Date: 02/28/2003		
Name of Institution/Organization		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
<b>SECTION A - BUDGET SUMMARY</b> <b>U.S. DEPARTMENT OF EDUCATION FUNDS</b>						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

Name of Institution/Organization		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						
SECTION C - OTHER BUDGET INFORMATION (see instructions)						



**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

**2. DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**3. DRUG-FREE WORKPLACE  
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check ☐ if there are workplaces on file that are not identified here.

#### **DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

#### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE



### Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

**I. I certify that**

**A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:**

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or
2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.);
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134i);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

**OR**

- B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).**

**II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.**

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: \_\_\_\_\_

OMB Control No. 1801-0004 (Exp. 8/31/2001)

**NOTICE TO ALL APPLICANTS**

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

***To Whom Does This Provision Apply?***

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

***What Does This Provision Require?***

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you

may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

*What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustrate how an applicant may comply with Section 427.

- (1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.
- (2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.
- (3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

**Estimated Burden Statement for GEPA Requirements**

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.



**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known:	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):	<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

### State Single Points of Contact (SPOCs)

In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated SPOCs. Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

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Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to [grants@omb.eop.gov](mailto:grants@omb.eop.gov). If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW, Washington, DC 20503.



# Federal Register

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**Wednesday,  
October 18, 2000**

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## **Part VII**

**Department of Agriculture**

**Department of Commerce**

**National Oceanic and Atmospheric  
Administration**

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**Department of Defense**

**Department of Energy**

**Department of the Interior**

**Environmental Protection  
Agency**

**Tennessee Valley Authority**

**Army Corps of Engineers**

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**Unified Federal Policy for a Watershed  
Approach to Federal Land and Resource  
Management; Notice**

**DEPARTMENT OF AGRICULTURE****Office of the Secretary****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****DEPARTMENT OF DEFENSE****Office of the Secretary****DEPARTMENT OF ENERGY****Office of the Secretary****DEPARTMENT OF THE INTERIOR****Office of the Secretary****ENVIRONMENTAL PROTECTION AGENCY****TENNESSEE VALLEY AUTHORITY****ARMY CORPS OF ENGINEERS****Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management**

**AGENCIES:** Office of the Secretary, USDA; National Oceanic and Atmospheric Administration, Commerce; Office of the Secretary, DOD; Office of the Secretary, Energy; Office of the Secretary, Interior; Office of the Administrator, EPA; Resource Stewardship, TVA; Office of the Assistant Secretary of the Army for Civil Works, COE.

**ACTION:** Notice of final policy.

**SUMMARY:** The Departments of Agriculture, Commerce, Defense, Energy and the Interior, the Environmental Protection Agency, the Tennessee Valley Authority, and the Army Corps of Engineers are adopting a unified Federal policy on watershed management. This policy, which provides a framework for a watershed approach to Federal land and resource management activities, is one of the action items in the President's *Clean Water Action Plan: Restoring and Protecting America's Waters*. The final policy has been revised in response to public comments on the proposed policy published in the **Federal Register** on February 22, 2000 (65 FR 8834).

**DATES:** This policy is effective October 18, 2000.

**ADDRESSES:** Copies of the final policy are available electronically from the Internet/World Wide Web at [www.cleanwater.gov/ufp](http://www.cleanwater.gov/ufp) or by contacting USDA-Forest Service,

Content Analysis Enterprise Team, Attn: UFP, Building 2, Suite 295, 5500 Amelia Earhart Drive, Salt Lake City, UT 84116; (801) 517-1037. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339.

**FOR FURTHER INFORMATION CONTACT:** Eric Janes, Rangelands, Soil and Water Group, Bureau of Land Management, Department of the Interior, (202) 452-7752, or Karen Solari, Watershed and Air Management Staff, Forest Service, Department of Agriculture, (202) 205-0879. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The final unified Federal policy on watershed management set out at the end of this notice is intended to provide a framework to enhance watershed management for the protection of water quality and the health of aquatic ecosystems on Federal lands. This policy is one of the 111 action items in the President's February 1998 *Clean Water Action Plan: Restoring and Protecting America's Waters*.

**Background**

More than 800 million acres of the Nation's land are managed by Federal agencies. These public lands contain significant physical and biological resources and are important to millions of Americans for multiple uses, such as drinking water, irrigation, transportation, recreation, and wildlife habitat. Federal land managers are responsible for protecting and restoring these resources.

The objective of the Federal Water Pollution Control Act of 1972, as amended, which is commonly referred to as the Clean Water Act, is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters."

Although Federal agencies are working to implement the applicable requirements of the Clean Water Act, further progress is needed both to prevent degradation of high quality waters and sensitive aquatic ecosystems and to accelerate the restoration of degraded water resources. This policy provides a foundation to help ensure that Federal land and resource management activities meet these goals and that the Federal government serves as a model for water quality stewardship.

We believe that the unified watershed-based approach outlined in this policy provides a strong foundation for achieving these goals.

Though this policy is not intended to be a rule, the proposed policy was published for notice and public comment in the February 22, 2000, **Federal Register** (65 FR 8834). We also posted the policy on the World Wide Web at [www.cleanwater.gov/ufp](http://www.cleanwater.gov/ufp) and mailed it to States, Tribes, environmental groups, and industry associations. We conducted eleven regional meetings; met with a number of organizations, such as the Western Governors' Association; and conducted meetings and conference calls with Tribal government representatives.

We received 248 responses from 126 organizations and 122 individuals on the proposed policy. Comments represented a diverse set of interests from across the country, including private citizens; State, Tribal and local governments; and industry and environmental groups. An interagency team reviewed and evaluated the comments and made changes to the policy based on these comments.

The majority of the commenters supported the overall goal of the policy to improve water quality on Federal lands through an emphasis on a watershed-based approach to land and resource management. Many commenters suggested language and content changes intended to improve the policy. The interagency review team identified six major questions or issue categories.

1. Do the participating agencies have the authority to develop and implement this policy?
2. How does the policy affect Tribal rights and interests?
3. What role will the States, Tribes, and local governments have in working with the Federal agencies to implement the policy?
4. What impacts will this policy have on the multiple uses of Federal lands?
5. How will the policy be implemented?
6. How will the public participate in implementing the policy?

The following section, Summary of Comments and Responses, includes a discussion of these issues and our response to the public comments. This section also describes all substantive changes made to the proposed policy based on the public comments and the Federal agencies' review of the policy. The text of the final policy is set out at the end of this notice.

**Summary of Comments and Responses**

*1. Do the participating agencies have the authority to develop and implement this policy?*

*Comments:* Some respondents asserted that the Clean Water Action Plan (CWAP) and the Unified Federal Policy (UFP) violate Congressional

mandates regarding multiple use, sustained yield and planning procedures found in the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.* (FLPMA), the Multiple Use and Sustained Yield Act, 16 U.S.C. § 531 *et seq.* (MUSYA), and the National Forest Management Act, 16 U.S.C. § 1600 *et seq.* (NFMA).

*Response:* As the agencies have explained in the CWAP itself, the CWAP is not a regulation and it does not establish a regulatory program. Rather, it is a call to action that “builds on the solid foundation of existing clean water programs” and seeks to “restore and protect water resources” within the framework of existing laws and regulations. Similarly, the UFP is intended to enhance the implementation of existing laws and improve coordination of Federal watershed management activities with States, Tribes, and interested stakeholders. In other words, nothing in the UFP (or the CWAP) directs agencies to violate any existing laws or regulations. For instance, the UFP calls upon agencies to enhance State, Tribal and public participation opportunities during the resource management decision-making process. However, any such enhancement must be fully consistent with resource management decision-making processes established by FLPMA and other applicable laws and their implementing regulations. As another example, the UFP asks agencies to employ collaborative decision-making processes that utilize scientific knowledge and understanding gained from watershed assessments to develop federal land management decisions. Again, any such collaboration would be structured and undertaken only in accordance with applicable laws such as FLPMA, MUSYA, and NFMA and their implementing regulations.

*Comments:* Some respondents commented that CWAP and, therefore, the UFP violate the Administrative Procedure Act (APA) and Intergovernmental Cooperation Act (ICA).

*Response:* Neither the CWAP nor the UFP is a regulation. Therefore, the formal requirements of APA applicable to the promulgation of government regulations do not apply. In contrast to a regulation, which would establish legally enforceable requirements, the UFP asserts goals and aspirations consistent with existing laws and regulations. The UFP does not identify or propose specific projects that would require consultation with local governments under the ICA. The Federal agencies have widely publicized the policy and encouraged public

discussion and feedback in order to have the widest possible participation of the public, including States and Tribes, in energizing the agencies’ efforts to restore America’s waters. Thus, States and Tribes were invited to participate in the UFP’s development by commenting on a “working draft” policy in June of 1999, eight months before publication of the proposed policy in February 22, 2000 **Federal Register** (65 FR 8334). Their comments were considered during the preparation of both the proposed and final policies.

*Comments:* Some respondents commented that the CWAP and, therefore, the UFP violate the National Environmental Policy Act (NEPA).

*Response:* The CWAP and the UFP provide a framework for energizing the agencies’ efforts to restore the nation’s waters pursuant to existing laws and regulations. As such, the CWAP and the UFP are broad policy statements that speak in general concepts and principles, do not establish or alter existing agency programs, and are not defined to the point that they can be meaningfully analyzed. The agencies will fully comply with NEPA and other applicable laws at the appropriate time, such as when the UFP’s policies are used to develop proposals for specific policies, programs, or projects. In other words, the Federal agencies fully intend to comply with NEPA at the appropriate time for all actions that require such compliance.

*Comments:* Some respondents asserted that the CWAP and, therefore, the UFP violate the Fifth Amendment’s prohibition on the taking of private property.

*Response:* Nothing in either the CWAP or the UFP deprives anyone of individual property rights or would deny any owner of property the economic use of that property. The CWAP and the UFP do not require, authorize, or even suggest the taking of private property by any governmental agency for any purpose. The UFP, by its terms, creates no enforceable rights. The UFP applies only to Federal land and resources, not to private property. The UFP does not prohibit or restrict any activity on private property.

*Comments:* Some respondents asserted that the CWAP and, therefore, the UFP violate the Regulatory Flexibility Act (RFA) because the effect of the CWAP for any significant impact on small entities and businesses was not analyzed.

*Response:* Because neither the CWAP nor the UFP is a regulation, the RFA does not apply to them. The RFA is triggered only “[w]hen an agency is required \* \* \* to publish general notice

of proposed rulemaking for any proposed rule \* \* \*” 5 U.S.C. 603(a). The CWAP and the UFP are policies, not rules, and therefore are not subject to RFA.

*Comments:* Several respondents questioned whether the authority exists for some of the activities in the policy; specifically, the authority to conduct watershed assessments and to apply special designations.

*Response:* Federal agencies have a variety of authorities to conduct watershed assessments and apply special designations. For example, in Public Law 94–579 (October 21, 1976), the Federal Land Policy and Management Act of 1976, Title II—Land Use Planning, Inventory and Identification, Section 201(a), Congress directed that the Secretary of the Interior “shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values.” In Title II, Section 202(c)(3), Congress directed the Secretary of the Interior to “give priority to the designation and protection of areas of critical environmental concern.” In the National Forest Management Act of 1976 (16 U.S.C. 1602), Section 5—Program Recommendations, Congress directed the Secretary of Agriculture to “recognize the fundamental need to protect and where appropriate, improve the quality of soil, water, and air resources.” Each agency has additional authorities to inventory resource conditions and prepare management plans to prevent natural resource degradation and to restore degraded areas. In order to clarify our intent, the final policy has been amended to include the phrase “using existing legal authorities” in Section II.B.2, which addresses special designations.

*Comments:* Several respondents commented on the protection of existing water rights. The agencies adopting this policy acknowledge the authority granted to Tribes and States regarding water rights.

*Response:* In order to clarify our intent, the introduction section of the final policy has been amended to affirm our intent not to affect water rights with the addition of the following language: “The policy applies only to Federal lands and resources and does not affect water rights laws, procedures, or regulations.” In the notice of the proposed policy published in the **Federal Register** on February 22, 2000 (65 FR 8334), we also stated our intent by publishing the following statement in the preamble: “\* \* \* nothing in the proposed policy is intended to adjudicate, determine, or otherwise



affect water rights. The proposed policy does not affect currently applicable laws, procedures, or regulations creating or determining water rights."

*2. How does the policy affect Tribal rights and interests?*

*Comments:* Several comments concerned tribal rights and interests.

*Response:* The final policy acknowledges the Federal policy of the government-to-government relationship between the United States and Tribes by expressly including Tribes as governmental partners in meeting the goals and objectives of this unified Federal policy on watershed management. The policy recognizes Tribal government authorities under the Clean Water Act and includes Tribes in all of the collaboration efforts addressed by the policy. The policy also has the flexibility to take into account indigenous knowledge when developing, selecting and implementing management actions.

*3. What role will States, Tribes, and local governments have in working with Federal agencies to implement the policy?*

*Comments:* A few respondents suggested we clarify the roles of the Federal agencies, States, and Tribes.

*Response:* In the preamble to the proposed policy, we recognized that Tribes and States have overall responsibility for managing waters under their jurisdiction. This recognition has been added to the introduction of the final policy. In addition, Section II.D.2 of the final policy states that we will develop formal agreements with States, Tribes, and local governments as appropriate to clarify responsibilities for watershed management.

*Comments:* Some respondents questioned the need for additional watershed assessments on Federally managed lands and requested clarification on the scope and scale of these assessments.

*Response:* The purpose of watershed assessment is to gain an understanding of the physical and biological processes that govern the flow, quality, and timing of water. It is our intent that watershed assessments will result in information that will become part of the basis for identifying management opportunities and priorities and for developing alternatives to protect or restore watersheds. We have included an outline in Section II.A.1.a of the final policy for the development of a consistent watershed assessment procedure. Although the agencies' field offices will have flexibility on the scale,

watershed assessments generally will be at the 5th level Hydrologic Unit Code (HUC) (40,000 to 250,000 acres) or 6th level HUC (10,000 to 40,000 acres).

*Comments:* A few respondents questioned whether the watershed assessments on Federally managed lands duplicate actions that the Tribes and States are required to conduct under the Clean Water Act.

*Response:* The Federal watershed assessments will supplement the Tribal and State assessments. In general, the Federal assessments will be more detailed (for example, we will analyze the cause of watershed problems and the potential for recovery) and will be at a smaller scale. We will use the results of these assessments to work with the Tribes and States in efforts to protect or improve water quality in watersheds that include Federal lands.

*Comments:* Several respondents emphasized that Federal watershed protection and restoration efforts must be coordinated with Tribal, State, and local efforts.

*Response:* The policy is intended to provide a framework for enhanced collaboration among the Federal agencies, States, Tribes, private landowners, and stakeholders. While the policy applies only to Federally managed lands, we recognize that collaboration is essential to successful watershed protection and restoration. The Federal agencies within a watershed are committed to working together and with States, Tribes, local governments, interested stakeholders, and private landowners to assess, prioritize, and focus funding and personnel for protection and restoration action in priority watersheds. The policy is broad to allow field level offices the flexibility to consider local conditions and the good work already underway. Through close coordination outlined in the policy, we believe work on Federal lands will complement actions taken by States, Tribes, and local communities.

*4. What impacts will this policy have on the multiple uses of Federal lands?*

*Comments:* Some respondents expressed concern that the policy might interfere with current multiple use management activities, while other respondents suggested that the policy be strengthened to help ensure that Federal land management activities would not further degrade water quality.

*Response:* Federal laws governing Federal land management already strike a balance between local and national interests in meeting multiple use mandates, preventing natural resource degradation, and preserving resource

viability. This policy is intended to provide a consistent approach to managing Federal lands and resources in accordance with applicable laws governing Federal land use management and water quality.

*5. How will the policy be implemented?*

*Comments:* Several respondents commented on the need for specific implementation information; in particular, when and how the actions are to be accomplished and how ongoing efforts by Tribes, States, and local communities will be impacted by the policy.

*Response:* With the adoption of the final policy, the agencies will work in close coordination with State, Tribal, and local government agencies; private landowners; and stakeholders to develop implementation plans that will incorporate the goals of the policy, build on current efforts, and will recognize work already being accomplished by Tribes, States, and local communities.

*Comments:* A few respondents questioned whether funding to implement the policy is available.

*Response:* We recognize that the implementation will vary among the agencies, based in part on existing budget allocations. We also anticipate that implementation of this policy will help to encourage Federal land and resource management agencies to pool funds to focus on priority efforts. Finally, we recognize that additional funding could accelerate implementation of this policy.

*6. How will the public participate in implementing the policy?*

*Comments:* Several respondents wanted to know how the public would be involved in policy implementation.

*Response:* One of the six guiding principles of the final policy (Section I.A-F) is to work closely with States, Tribes, local governments, private landowners, and stakeholders to implement this policy (Section I.D). The policy provides for two types of public participation: (1) Opportunities to review and comment throughout Federal planning processes, and (2) Opportunities to assist in on-the-ground work (Section II.D). In general, the agencies' field offices will be responsible for working with States, Tribes, local governments, private landowners, and stakeholders to provide opportunities for input, at a minimum, in the following areas:

- Assessing the effects of our current and past actions on the condition of watersheds with significant Federal lands and resources (Section II.A.2.a).

- Identifying specific watersheds with significant Federal lands and resources as priorities for protection, management, and improvement (Section II.B.1).

- Improving watershed conditions through restoration and adaptive management (Section II.B.4).

*Comments:* Two respondents expressed concern that private landowners were not mentioned until the end of the policy.

*Response:* We recognize that private landowners play a very important role in implementing a watershed approach. The term "stakeholder" is intended to include private landowners. In addition, the term "private landowners" was added in several sections of the final policy to clarify the intent of the policy to recognize their role and include them in many steps to achieve watershed management.

Dated: September 20, 2000.

For the Department of Agriculture.

**James R. Lyons,**

*Under Secretary, Natural Resources and Environment.*

Dated: October 2, 2000.

For the Department of Commerce, National Oceanic and Atmospheric Administration.

**D. James Baker,**

*Under Secretary for Oceans and Atmosphere.*

Dated: September 28, 2000.

For the Department of Defense.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

Dated: September 22, 2000.

For the Department of Energy.

**David Michaels,**

*Assistant Secretary, Environment, Safety and Health. 9*

Dated: September 7, 2000.

For the Department of the Interior.

**Sylvia V. Baca,**

*Assistant Secretary for Land and Minerals Management.*

August 29, 1999.

For the Environmental Protection Agency.

**J. Charles Fox,**

*Assistant Administrator for Water.*

Dated: September 1, 2000.

For the Tennessee Valley Authority.

**Ruben O. Hernandez,**

*Vice President, Resource Stewardship.*

Dated: September 14, 2000.

For the Army Corps of Engineers.

**Joseph W. Westphal,**

*Assistant Secretary of the Army (Civil Works).*

## **Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management**

### **Introduction**

Federal agencies manage large amounts of public lands throughout the country. To protect water quality and aquatic ecosystems on these public lands, Federal agencies have developed the following policy to reduce water pollution from Federal activities and foster a unified, watershed-based approach to Federal land and resource management. This policy is intended to accelerate Federal progress towards achieving the goals of the Clean Water Act (Federal Water Pollution Control Act of 1972, 33 U.S.C. 1251 *et seq.*). This policy applies only to Federal lands and resources and does not affect water rights laws, procedures, or regulations. This policy does not supersede or otherwise affect existing State or Tribal authority under the Clean Water Act. The Federal agencies also acknowledge that, in international waters, the watershed approach is subject to the international treaties and agreements affecting those waters.

### **I. Policy Goals**

We, the Federal agencies who have signed this policy, are committed to managing the Federal lands, resources, and facilities in our care as models of good stewardship and effective watershed management.

We recognize that State, Tribal, and local programs for watershed protection and improvement are currently underway and producing positive results. We also recognize the success of locally led, voluntary, watershed groups in planning and implementing water quality improvement actions. This policy seeks to build upon those existing efforts and expand cooperation among Federal, Tribal, State and local partners. This policy will enhance these programs by improving consistency among Federal agency watershed protection programs. We acknowledge that those Federal agencies without established programs will face an additional challenge to implement this policy and that the pace and level of implementation will vary by agency.

The following policy has two goals: (1) Use a watershed approach to prevent and reduce pollution of surface and ground waters resulting from Federal land and resource management activities; and (2) Accomplish this in a unified and cost-effective manner.

To develop a unified Federal policy that meets these two goals, we incorporated the following guiding principles:

A. Use a consistent and scientific approach to manage Federal lands and resources and to assess, protect, and restore watersheds.

B. Identify specific watersheds in which to focus our funding and personnel and accelerate improvements in water quality, aquatic habitat, and watershed conditions.

C. Use the results of watershed assessments to guide planning and management activities in accordance with applicable authorities and procedures.

D. Work closely with States, Tribes, local governments, private landowners, and stakeholders to implement this policy.

E. Meet our Clean Water Act responsibility to comply with applicable Federal, State, Tribal, interstate, and local water quality requirements to the same extent as non-governmental entities.

F. Take steps to help ensure that Federal land and resource management actions are consistent with applicable Federal, State, Tribal, and local government water quality management programs.

### **II. Agency Objectives**

To accomplish these policy goals, we propose to use existing funding, personnel, and authorities to pursue the following objectives. All agencies will implement this policy as individual agency laws, missions, funding, and fiscal and budgetary authorities permit.

A. We will develop a science-based approach to watershed assessment for Federal lands. Watershed assessment information will become part of the basis for identifying management opportunities and priorities and for developing alternatives to protect or restore watersheds.

1. We will develop consistent procedures for delineating, assessing, and classifying watersheds.

a. We will work together to define and implement interagency guidelines for the delineation of watershed (5th level) hydrologic unit code boundaries.

b. Building on current efforts, we will develop and test watershed assessment procedures in watersheds that have been delineated using the interagency guidelines. The watershed assessment procedures will outline a process to:

(1) Focus on the analysis of factors that most directly influence changes in the condition of the specific watershed of interest (for example, meteorology, surface and ground water, soils, geology,

vegetation, topography, channel geometry factors, and natural and human disturbances).

(2) Determine existing conditions and reference conditions.

(3) Identify the significance and the causes of the differences between existing and reference conditions for the watershed and the potential for recovery.

c. We will develop a framework for consistent classification of the condition of watersheds with significant Federal lands and resources. The framework will use the results of the watershed assessments.

2. We will conduct assessments of watersheds that have significant Federal lands and resources.

a. We will assess the affects of our current and past actions on the condition of watersheds with significant Federal lands and resources in cooperation with States, Tribes, local governments, private landowners, and interested stakeholders, using the procedures developed in Section II.A.1.b and recognizing current agreements.

b. We will develop schedules for assessments and identify necessary funding and personnel.

c. We will conduct assessments in priority watersheds on a 10-year cycle, or on a periodic cycle that better demonstrates changes in a particular watershed's condition over time. We will conduct assessments in other watersheds on a planned, periodic cycle.

d. We will use watershed assessments, where available, to improve management of Federal lands and resources. We will provide the results of assessments to States, Tribes, and local governments and use these assessments to assist States, Tribes, and local governments in protecting and restoring watersheds designated as priorities by State and Tribal Unified Watershed Assessments, Source Water Assessments or other assessments.

B. We will use a watershed management approach when protecting and restoring watersheds.

1. We will work collaboratively to identify priority watersheds.

a. We will work with States, Tribes, local governments, private landowners, and interested stakeholders to identify specific watersheds with significant Federal lands and resources as priorities for protection, management, and improvement.

b. We will identify priority watersheds based on factors that include:

(1) The percentage of the watershed under Federal management;

(2) Issues the Federal agencies identify, including possible adverse effects on surface and ground water quality;

(3) Magnitude of water quality impairment, impacts to aquatic resources, and/or changes to flow regime;

(4) State and Tribal Unified Watershed Assessments and Source Water Assessments;

(5) Vulnerability of the watershed to degradation; and

(6) Substantive public interest.

2. Using existing legal authorities, we will develop a process and guidelines for identifying and designating waters or watersheds on Federal lands that may have significant human health, public use, or aquatic ecosystem values and a need for special protection.

3. We will implement pollution prevention and controls, consistent with applicable legal authorities.

a. We will address nonpoint and point source pollution from Federal land management activities, protect or improve water quality, and meet applicable State and Tribal water quality requirements under the Clean Water Act.

b. We will work with States, Tribes, and local governments to address nonpoint sources of pollution by:

(1) Identifying best management practices (BMPs) and management strategies that meet applicable Federal, State, and Tribal water quality requirements;

(2) Adjusting BMPs when monitoring reveals that they do not adequately protect water quality; and

(3) Mitigating impacts when implementation of BMPs results in unexpected adverse water quality impacts.

4. We will improve watershed conditions through restoration and adaptive management. We will strive to work with States, Tribes, local governments, private landowners, and interested stakeholders to improve the condition of priority watersheds. Changes in management strategies and restoration efforts will focus on watersheds where Federal land and resource management activities can meaningfully influence surface and ground water quality and aquatic resources.

5. We will base watershed management on scientific principles and methods. We will use scientific information from research and management experience in designing and implementing watershed planning and management programs, and setting management goals (e.g., desired conditions). To expand current

knowledge, we will collaborate to identify research needs and contribute to or sponsor research, as appropriate.

6. We will identify and incorporate watershed management goals into our planning, programs, and actions. We will periodically review and amend, as appropriate, policies and management plans for Federal lands and resources to meet goals for watershed protection and improvement. We will incorporate adaptive management principles into our programs. Our watershed goals will seek to minimize adverse water quality impacts due to ongoing and future management programs, minimize impairment of current or future uses, and restore watersheds where applicable State and Tribal water quality requirements under the Clean Water Act are not achieved due to activities occurring on Federal lands.

7. We will help Tribes and States develop science-based total maximum daily loads (TMDLs). We will assist and support State and Tribal efforts to develop and implement TMDLs in watersheds with significant Federal land and resource management activities. We will provide technical assistance, tools, and expertise. We will use TMDL results in watershed planning and subsequent resource management activities to meet applicable State and Tribal water quality requirements under the Clean Water Act.

C. We will improve our compliance with water quality requirements under the Clean Water Act.

1. We will review agency policies to improve compliance with water quality requirements. We will identify and review our rules, policies, and procedures that affect water quality or watershed conditions for compliance under the Clean Water Act with applicable Federal, State, Tribal, interstate, and local requirements for preventing and controlling water pollution.

2. We will integrate water quality standards and watershed management goals. We will work collaboratively to clarify relationships under the Clean Water Act among BMPs, TMDLs, and State and Tribal water quality standards to achieve the following goals:

a. Better coordination of watershed goals and objectives;

b. Better sharing of scientific and technical data, equipment, and expertise;

c. Better support to the State/Tribal triennial reviews so that they reflect the importance of natural background loadings;

d. Better implementation mechanisms for meeting standards under the Clean

Water Act, including practical interim measures where standards are not immediately achievable; and

e. Consistent treatment of Federal and non-Federal entities.

3. We will review our policies and processes that may affect land and water uses and water quality. In cooperation with Tribes and States, we will review our policies and processes for land and water uses that may affect water quality and watershed condition. We will consider revising these policies or processes, as appropriate, to ensure that they address watershed protection, improvement, monitoring, and water quality compliance.

D. We will enhance collaboration.

1. We will improve cooperation among Federal agencies. We will address water quality and aquatic ecosystem issues for watersheds at the national, regional, and field levels.

2. We will improve cooperation with States, Tribes, and local governments. We will develop formal agreements as appropriate with States, Tribes, and local governments to clarify responsibilities for watershed management. These agreements will seek a watershed-based approach for preventing or reducing pollution from point and nonpoint sources.

3. We will expand opportunities for participation by interested stakeholders. We will seek participation by interested stakeholders in watershed planning and management decisions using available mechanisms in existing planning processes. We will:

a. Identify specific opportunities for review and comment by interested stakeholders during Federal land and watershed planning efforts;

b. Provide opportunities for interested stakeholders to participate in monitoring and assessing watershed conditions and in implementing watershed restoration projects; and

c. Seek early feedback on key decisions affecting watershed management and carefully consider this feedback in agency decision-making.

4. We will expand opportunities for dialogue with private landowners. In priority watersheds with a mix of Federal and private lands, we will work with private sector landholders to involve them in the watershed management process. We will work closely to help ensure that Federally funded projects involving private cost-share partners fully consider watershed management objectives for both public and private lands.

5. We will coordinate monitoring. We will develop and implement a coordinated monitoring and evaluation approach and will monitor water quality

trends and our management activities to determine whether progress is being made in protecting and improving water quality.

6. We will share training, information, and technical expertise. To promote collaboration and consistency in watershed management practices, we will continue, expand, develop, implement, and make available joint training programs; share information and technical expertise; transfer technologies for watershed management; and develop a consistent way to organize and present information and make it more accessible.

This policy does not create any right or benefit, or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. This policy does not alter or amend any requirement under statute, regulation, or Executive Order.

Dated: September 20, 2000.

For the Department of Agriculture.

**James R. Lyons,**

*Natural Resources and Environment.*

Dated: October 2, 2000.

For the Department of Commerce, National Oceanic and Atmospheric Administration.

**D. James Baker,**

*Under Secretary for Oceans and Atmosphere.*

Dated: September 28, 2000.

For the Department of Defense.

**Sherri W. Goodman,**

*Deputy Under Secretary of Defense (Environmental Security).*

Dated: September 22, 2000.

For the Department of Energy.

**David Michaels,**

*Assistant Secretary, Environment, Safety and Health.*

Dated: September 7, 2000.

For the Department of the Interior.

**Sylvia V. Baca,**

*Assistant Secretary for Land and Minerals Management.*

Dated: August 29, 2000.

For the Environmental Protection Agency.

**J. Charles Fox,**

*Assistant Administrator for Water.*

Dated: September 1, 2000.

For the Tennessee Valley Authority.

**Ruben O. Hernandez,**

*Vice President, Resource Stewardship.*

Dated: September 14, 2000.

For the Army Corps of Engineers.

**Joseph W. Westphal,**

*Assistant Secretary of the Army (Civil Works).*

## Glossary of Terms

These definitions are intended only to help you understand the policy better, and do not

change the meanings of terms defined by law or regulation. If we define a term in the policy that is not defined elsewhere by law or regulation, you should not consider any such definition to have the effect of a law or regulation. Also, if we use a definition in this policy that is subsequently found to conflict with current laws or regulations, the current laws or regulations would apply. For example, "best management practices" and "total maximum daily load" are defined in the Environmental Protection Agency's regulations at 40 CFR 122.2 and 40 CFR 130.2(i), respectively.

**Adaptive management:** A type of natural resource management in which decisions are made as part of an ongoing science-based process. Adaptive management involves testing, monitoring, and evaluating applied strategies, and incorporating new knowledge into management approaches that are based on scientific findings and the needs of society. Results are used to modify management policy, strategies, and practices.

**Best management practices (BMPs):** Methods, measures, or practices to prevent or reduce water pollution, including, but not limited to:

1. Structural and nonstructural controls,
2. Operation and maintenance procedures, and
3. Other requirements and scheduling and distribution of activities.

Usually BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions and political, social, economic, and technical feasibility.

**Consistent:** Conforming to the same principles or course of action.

**Hydrologic unit:** A national standard system of watersheds that are classified into four types of units: regions, sub-regions, accounting units, and cataloging units. The hydrologic units are arranged within each other, from the smallest (cataloging units or sub-basin) to the largest (regions). Each hydrologic unit is identified by a unique hydrologic unit code (HUC) consisting of two to eight digits based on the four levels of classification in the hydrologic unit system. A standardized fifth-level of classification or 10-digit hydrologic unit (watershed) has recently been developed. Locally, a non-standard sixth-level sub-watershed also may have been developed.

**Priority watersheds:** Watersheds selected for the focusing of Federal funds and personnel for the purpose of accelerating improvements in water quality and watershed condition.

**Reference condition:** The range of factors (for example, meteorology, surface and ground water, soils, geology, vegetation, topography, channel geometry factors, and natural and human disturbances) that is representative of the watershed's recent historical values prior to significant alteration of its environment. The reference could represent conditions found in a relic site or a site having had little significant disturbance. The reference condition does not necessarily represent conditions that are attainable. The purpose of references is to establish a basis for comparing what

currently exists to what has existed in recent history. References can be obtained through actual data, such as paired watersheds or well-managed watersheds, or through extrapolated techniques, such as modeling.

*Resources:* The biological and physical characteristics for which Federal agencies have management and stewardship responsibility; for example, air, soil, water, fish, wildlife, vegetation, and minerals.

*Total maximum daily load:* An estimate of the total quantity of pollutants (from all sources—point, nonpoint, and natural) that may be allowed into waters without exceeding applicable water quality standards.

*Unified Watershed Assessment:* The *Clean Water Action Plan* asked Tribes and States to assess their watersheds and identify all watersheds as being in one of four categories:

1. Not meeting, or facing an imminent threat of not meeting, clean water or other natural resource goals;
2. Meeting goals but needing action to sustain water quality;

3. Having pristine/sensitive aquatic system conditions on Federal, State, or Tribal lands; or

4. Needing more information to assess watershed condition.

*Source Water Assessment:* A process, required by the Safe Drinking Water Act, whereby the State or designated Tribe or agency, identifies the areas that provide surface and ground water to public drinking water systems; inventories existing contaminants; and determines vulnerability of the system to contamination.

*Watershed:* A geographic area of land, water, and biota within the confines of a drainage divide. The total area above a given point of a water body that contributes flow to that point.

*Watershed approach:* A framework to guide watershed management that: (1) uses watershed assessments to determine existing and reference conditions; (2) incorporates assessment results into resource management planning; and (3) fosters collaboration with all landowners in the watershed. The

framework considers both ground and surface water flow within a hydrologically defined geographical area.

*Watershed assessment:* An analysis and interpretation of the physical and landscape characteristics of a watershed using scientific principles to describe watershed conditions as they affect water quality and aquatic resources. Initial watershed assessments will be conducted using existing data, where available. Data gaps may suggest the collection of additional data.

*Watershed condition:* The state of the watershed based on physical and biogeochemical characteristics and processes (e.g., hydrologic, geomorphic, landscape, topographic, vegetative cover, and aquatic habitat), water flow characteristics and processes (e.g., volume and timing), and water quality characteristics and processes (e.g., chemical, physical, and biological), as it affects water quality and water resources.

[FR Doc. 00-26566 Filed 10-17-00; 8:45 am]

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# Federal Register

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**Wednesday,  
October 18, 2000**

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## **Part VIII**

## **The President**

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**Proclamation 7364—Amending  
Proclamation 7362, Display of the Flag at  
Half-Staff as a Mark of Respect for Those  
Who Died on the United States Ship *Cole***



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Title 3—

Proclamation 7364 of October 16, 2000

The President

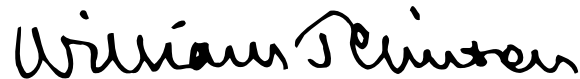
**Amending Proclamation 7362, Display of the Flag at Half-Staff as a Mark of Respect for Those Who Died on the United States Ship *Cole***

**By the President of the United States of America**

**A Proclamation**

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, and in order to extend the display of the flag at half-staff as a mark of respect for those who died on the United States Ship COLE, it is hereby ordered that Proclamation 7362 of October 12, 2000, is amended by deleting in the first sentence the words “Monday, October 16” and inserting in their place the words “Wednesday, October 18.”

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 00-26987

Filed 10-17-00; 10:51 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Twenty-year patent term; patent term adjustment; implementation; published 9-18-00

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- Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply; findings rescission; published 7-20-00
- Correction; published 7-25-00

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- Interstate ozone transport reduction—
- Nitrogen oxides emissions; stay of 8-hour portion of findings of significant contribution and rulemaking; published 9-18-00

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- Wildlife; 2001-2002 subsistence taking; comments due by 10-27-00; published 8-24-00

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- Urban and Community Forestry Assistance Program; comments due by 10-25-00; published 9-25-00

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Fishery conservation and management:

- West Coast States and Western Pacific fisheries—
- Pacific Coast groundfish; comments due by 10-23-00; published 10-6-00
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- Ocean and coastal resource management:

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- Commercial submarine cables; installation and maintenance; comments due by 10-23-00; published 8-23-00

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- Prompt payment and overpayment recovery; comments due by 10-27-00; published 8-28-00

**ENERGY DEPARTMENT****Energy Efficiency and Renewable Energy Office**

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- Commercial and industrial equipment; energy efficiency program—
- Commercial packaged boilers; test procedures and efficiency standards; comments due by 10-23-00; published 8-9-00
- Commercial water heaters, hot water supply boilers, and unfired hot water storage tanks; test procedures and efficiency standards; comments due by 10-23-00; published 8-9-00
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- Cellulose products manufacturing; comments due by 10-27-00; published 8-28-00

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- Gulf of Mexico Service Area; cellular service and other commercial mobile radio services; correction; comments due by 10-26-00; published 9-26-00

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- Prompt payment and overpayment recovery; comments due by 10-27-00; published 8-28-00

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#### MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

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##### Surface Transportation Board

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Carload waybill sample reporting procedures; modification; comments due by 10-23-00; published 9-8-00

#### LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

#### H.R. 1162/P.L. 106-295

To designate the bridge on United States Route 231 that

crosses the Ohio River between Maceo, Kentucky, and Rockport, Indiana, as the "William H. Natcher Bridge". (Oct. 13, 2000; 114 Stat. 1043)

#### H.R. 1605/P.L. 106-296

To designate the Federal building and United States courthouse located at 402 North Walnut Street in Harrison, Arkansas, as the "J. Smith Henley Federal Building and United States Courthouse". (Oct. 13, 2000; 114 Stat. 1044)

#### H.R. 1800/P.L. 106-297

Death in Custody Reporting Act of 2000 (Oct. 13, 2000; 114 Stat. 1045)

#### H.R. 2752/P.L. 106-298

Lincoln County Land Act of 2000 (Oct. 13, 2000; 114 Stat. 1046)

#### H.R. 2773/P.L. 106-299

Wekiva Wild and Scenic River Act of 2000 (Oct. 13, 2000; 114 Stat. 1050)

#### H.R. 4318/P.L. 106-300

Red River National Wildlife Refuge Act (Oct. 13, 2000; 114 Stat. 1055)

#### H.R. 4579/P.L. 106-301

Utah West Desert Land Exchange Act of 2000 (Oct. 13, 2000; 114 Stat. 1059)

#### H.R. 4583/P.L. 106-302

To extend the authorization for the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs. (Oct. 13, 2000; 114 Stat. 1062)

#### H.R. 4642/P.L. 106-303

To make certain personnel flexibilities available with respect to the General Accounting Office, and for other purposes. (Oct. 13, 2000; 114 Stat. 1063)

#### H.R. 4806/P.L. 106-304

To designate the Federal building located at 1710 Alabama Avenue in Jasper, Alabama, as the "Carl Elliott Federal Building". (Oct. 13, 2000; 114 Stat. 1071)

#### H.R. 5284/P.L. 106-305

To designate the United States customhouse located at 101 East Main Street in Norfolk, Virginia, as the "Owen B. Pickett United States Customhouse". (Oct. 13, 2000; 114 Stat. 1072)

#### H.J. Res. 111/P.L. 106-306

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Oct. 13, 2000; 114 Stat. 1073)

**S. 366/P.L. 106-307**

El Camino Real de Tierra  
Adentro National Historic Trail  
Act (Oct. 13, 2000; 114 Stat.  
1074)

**S. 1794/P.L. 106-308**

To designate the Federal  
courthouse at 145 East  
Simpson Avenue in Jackson,  
Wyoming, as the "Clifford P.  
Hansen Federal Courthouse".

(Oct. 13, 2000; 114 Stat.  
1077)

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